59TH CONGRESS, 2d Session. SENATE. DOCUMENT No. 227.

EASTERN CHEROKEES.

Mr. LONG presented the following

PAPERS IN THE CAUSE OF THE EASTERN CHEROKEES AGAINST THE UNITED STATES.

JANUARY 18, 1907.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives of the United States:

The memorial of the Eastern Cherokees respectfully shows that on February 24, 1900, they entered into a contract with John Vaile, of Fort Smith, Ark., and on April 20, 1901, they entered into a second contract with said Vaile, by which the said Vaile undertook for himself and his associates to collect for your memorialists their claim against the United States under what is known as the Slade and Bender accounting and settlement, which claim amounts to $1,111,284.70, with interest thereon at 5 per cent per annum from June 12, 1838, to which your memorialists were solely entitled, as will be hereinafter shown; that by the terms of said contract said Vaile and his associates were to be paid 15 per cent of the amount awarded to your memorialists; that immediately upon the making of said contract said Vaile associated with him Col. Robert L. Owen. Vaile & Owen, acting in behalf of your memorialists under said contract, procured a reference of the claim of your memorialists to the Court of Claims under the terms and provisions of the act of March 3, 1883, known as the Bowman Act, and there prosecuted the said claim, it being case No. 10386, Congressional, until on April 28, 1902, the Court of Claims made findings of fact in favor of your memorialists, and on May 2, 1902, certified the same to the Senate of the United States. Said findings of fact are printed as Senate Document No. 334, Fifty-seventh Congress, first session, and are filed herewith, marked "Exhibit 1."

While said findings of fact were before Congress, on July 1, 1902, Congress passed an act by the sixty-eighth section of which the existence of the dispute between your memorialists and the Cherokee Nation as to the ownership of said funds was fully recognized, which dispute was further recognized by the act of March 3, 1903 (32 Stat. L., 996), and the Court of Claims was invested with jurisdiction to hear and determine the controversy between your memorialists and the said Cherokee Nation.

Your memorialists further show that by virtue of the provisions of said section 68 of the act of Congress of July 1, 1902 (32 Stat. L., 726), as amended by the act of March 3, 1903, petitions were filed by said Cherokee Nation and your memorialists, respectively, and said Court of Claims and the Supreme Court of the United States both determined that said fund belonged to your memorialists and should be distributed to your memorialists as individuals, all of which fully appears from the report of said case (202 U. S., 101).

Your memorialists further show that while their contract with said John Vaile (known as the "Owen contract") was in full force, the Cherokee Nation (claiming the ownership of said fund and denying your memorialists any interest therein even as cestius que trustent) through its principal chief, Thomas M. Buffington, on January 16, 1903, entered into a contract, a copy of which is filed herewith marked "Exhibit 2," for the purpose of defeating the claim of your memorialists, with Finklenberg, Nagel & Kirby, a firm of St. Louis lawyers, and one, Edgar Smith, a lawyer of Vinita, Ind. T., by the terms of which the said lawyers were to receive a certain per cent of the sum which they might recover for the Cherokee Nation. This contract was made and executed in the office of the Secretary of the Interior, acknowledged before a judge of the supreme court of the District of Columbia, and approved by the Secretary of the Interior and the Commissioner of Indian Affairs all on one day—to wit, January 16, 1903—and without any notice to your memorialists, and four days thereafter the petition of said Cherokee Nation, praying that said fund be awarded to it to the exclusion of your memorialists, was filed by said St. Louis and Indian Territory lawyers, as attorneys for said nation.

Your memorialists further show that from the day of the execution of said contract to the present moment said Finklenberg, Nagel & Kirby and Edgar Smith, as required by their employment, have denied the right of your memorialists to said fund, and have, by their pleadings, briefs, and oral arguments in the Court of Claims, the Supreme Court of the United States, and the supreme court of the District of Columbia, used their unceasing, though unsuccessful, efforts to defeat the right of your memorialists to said fund, and your memorialists, to sustain their statement on their behalf, file herewith the printed brief of said Finklenberg, Nagel & Kirby and Edgar Smith in said cause in the Supreme Court of the United States, as "Exhibit 3."

No application was ever made to the Court of Claims for fees to the said attorneys of the Cherokee Nation based upon the recovery of the item involved in the Slade and Bender accounting, and the said court never had or attempted to take jurisdiction in that behalf, as more fully appears on page — of the reply brief of the attorneys for the Cherokee Nation in the Supreme Court of the United States, above referred to as "Exhibit No. 3;" but your memorialists, under and by virtue of the act of Congress of March 3, 1903 (32 Stat. L., 996), applied to the Court of Claims for an allowance of fees based on the recovery of said item to be paid to their attorneys, and on May 28, 1906, the said court by its final decree in said cause awarded to said John Vaile and his associates 15 per cent of said $4,900,000 so found to be due to your memorialists as compensation to said Vaile and his associates for their services rendered to your memorialists, being the amount agreed to be paid to said Vaile and his asso-

ciates by said contract of February, 1900, said fee to Vaile and his associates amounting to $740,555.31, and has been paid by your memorialists through the Treasury of the United States, though your memorialists have not yet received for themselves a single cent of the sum so found to belong to them. And your memorialists file herewith a certified copy of said final judgment of the Court of Claims, marked "Exhibit No. 4."

Your memorialists further show that a few days after said payment by them of said sum of $740,555.31 to their own attorneys they learned that Ethan Allen Hitchcock, Secretary of the Interior, was about to distribute or cause to be distributed to said Finklenberg, Nagel & Kirby and Edgar Smith or in some way authorize or empower Charles H. Treat, Treasurer of the United States, to pay to them about $150,000 out of the said sum belonging to your memorialists for services which he, the said Hitchcock, had certified, or was about to certify, to said Treasurer, had been rendered by said Finklenberg, Nagel & Kirby and Edgar Smith in recovering said money. Whereupon Frank J. Boudinot, one of their number, applied on behalf of himself and your memorialists to the supreme court of the District of Columbia for a writ of injunction to restrain said Hitchcock from directing said payment and said Charles H. Treat, Treasurer, from paying any sum to said Finklenberg, Nagel & Kirby and Edgar Smith. Upon the return to a rule to show cause why said injunction should not issue the attorneys who now represent your memorialists argued the question before the court orally and submitted in support of their contention a printed brief, a copy of which is filed herewith, marked "Exhibit No. 5." Whereupon Mr. Justice Gould, in an opinion held that he had no power to issue said writ and denied the same on September 21, 1906, and on October 8, 1906, without a submission of the cause to him on bill and answer, denied to your memorialists the right to take proof in support of the allegations of said bill, though no demurrer had been interposed nor had there been a submission of the case on bill and answer, a ruling admitted by him at the time he announced it to be without precedent. (See certified copy of the record in said cause of Boudinot *v.* Hitchcock, filed herewith as Exhibit No. 6.)

On September 21, 1906, the said solicitors for your memorialists wrote and transmitted to Charles H. Treat a letter, of which Exhibit No. 7 is a press copy, and received Exhibit No. 8 in reply. In response to Exhibit No. 8 these solicitors waited upon the Solicitor of the Treasury and laid the matter before him, and it was but a short while thereafter that Judge Gould dismissed the bill of complaint, as above described. Boudinot prayed an appeal from the order dismissing his bill of complaint, but before his transcript of record could be prepared by the clerk—to wit, on November 3, 1906—the Treasurer of the United States paid to said Finklenberg, Nagel & Kirby and Edgar Smith, by Indian warrant 12947, the sum of $149,324.80 out of the said moneys awarded to your memoralists by the decree of the Court of Claims and appropriated to be paid to them by the general deficiency bill passed June 30, 1906. Your memorialists show that it was useless for them to prosecute the appeal in the Boudinot case further, as the money, the payment of which he had sought to restrain, had been paid. The situation was this: The prayer for injunction had been denied, he was therefore not allowed to give a bond, though he would

have given one if the injunction had been granted. His bill was dismissed, and, as there had been no order of the court staying the payment, the Treasurer in his wisdom saw fit to pay it, and the fund being paid, no appellate court would or could restore it.

Your memorialists therefore submit that a grievous wrong in this behalf has been done them which the court has not set right, in that their money has been taken without due process or any process of law for the payment of lawyers for an unsuccessful effort to defeat their claim, and they submit that because the court has failed to redress their wrongs the greater they believe is the necessity for action by your honorable body in order that appropriation may be made to pay to them the money which has thus wrongfully been taken from them.

Inasmuch as there were three items, to wit, items 1, 3, and 4, in the judgment of the Court of Claims, which were payable to the Cherokee Nation and in which your memorialists had no interest, amounting in all to about $46,000, your memorialists concede that $2,300 of the sum of $149,324.80 paid to the said attorneys of the Cherokee Nation was properly paid, but they respectfully submit that the remainder of said payment, $147,024.80, was improperly paid.

Wherefore they pray that your honorable body will make an appropriation out of any money in the Treasury not otherwise appropriated of $147,024.80 for the payment to them of the said claim.

CHARLES POE,
SAM'L A. PUTMAN,
Solicitors for Eastern Cherokees.

[Senate Document No. 334, Fifty-seventh Congress, first session.]

EXHIBIT NO. 1.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS, TRANSMITTING CERTIFIED COPY OF THE FINDINGS FILED BY THE COURT IN THE CAUSE OF THE EASTERN CHEROKEES AGAINST THE UNITED STATES, REFERRED TO SAID COURT BY RESOLUTION OF THE SENATE UNDER ACT OF MARCH 3, 1883.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 2, 1902.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the Senate of the United States under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

HON. WILLIAM P. FRYE,
President of the Senate pro tempore.

[In the Court of Claims. Congressional No. 10386. Decided April 28, 1902. The Eastern Cherokees *v.* The United States.]

STATEMENT.

The claim in the above-entitled case was transmitted to the court by resolution of the United States Senate February 20, 1901, as follows:

"*Resolved*, That the bill (S. 3681) entitled 'A bill providing for the payment of the award of the Secretary of the Interior in favor of the Cherokees, made under the provision of the act of Congress of March third, eighteen hundred and ninety-three,'

now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled 'An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government,' approved March 3, 1883; and the said court shall proceed with the same in accordance with the provisions of such act, and report to the Senate in accordance therewith."

Senate bill 3681, referred to in the above resolution, is as follows:

"A BILL providing for the payment of the award of the Secretary of the Interior in favor of the Cherokees made under the provision of the act of Congress of March third, eighteen hundred and ninety-three.

"Whereas by the act of Congress approved March third, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and forty), the so-called Cherokee agreement was 'ratified by the Congress of the United States,' * * * and it was agreed therein that 'the provisions of said agreement so amended shall be fully performed and carried out on the part of the United States;' and

"Whereas in said Cherokee agreement it was expressly provided that 'the United States shall without delay render to the Cherokee Nation' 'a complete account of moneys due the Cherokee Nation under any of the treaties,' and 'if it shall be found upon such accounting that any sum of money has been so withheld the amount shall be duly appropriated by Congress' 'at the session immediately following such accounting;' and

"Whereas the said act of Congress appropriated the sum of five thousand dollars (Twenty-seven Statutes, six hundred and forty-three) 'to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to employ such expert person or persons to properly render a complete account to the Cherokee Nation of moneys due said nation, as required by the fourth subdivision of article two of said agreement;' and

"Whereas James A. Slade and Joseph T. Bender were duly appointed by the Secretary of the Interior as experts to render the account as above authorized by Congress, and did, on April twenty-eighth, eighteen hundred and ninety-four, report and render an account of certain sums due the Cherokee Nation, with interest thereon as itemized and set forth on page thirty-two, House of Representatives Executive Document Numbered One hundred and eighty-two, Fifty-third Congress, third session; and

"Whereas the Secretary of the Interior did, on January seventh, eighteen hundred and ninety-five, transmit, in compliance with the provision of the third subdivision of article two of the agreement made December nineteenth, eighteen hundred and ninety-one, with the Cherokee Indians, the above complete account of moneys due the Cherokee Nation, prepared in accordance with the provisions of the said act of March third, eighteen hundred and ninety-three, together with a certified copy of an act of the Cherokee national council accepting said accounting: Now, therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to refund to the five million dollar fund of the Eastern Cherokees the amount erroneously withdrawn therefrom on account of the removal of the Eastern Cherokees under the treaty of eighteen hundred and thirty-five to the Indian Territory, together with interest thereon, as found due by James A. Slade and Joseph T. Bender, expert accountants, acting under the direction of the Secretary of the Interior, in pursuance of the provisions of the act of Congress of March third, eighteen hundred and ninety-three, said interest to be computed at the rate of five per centum per annum from June twelfth, eighteen hundred and thirty-eight, until paid, in accordance with the resolution of the Senate of the United States of September fifth, eighteen hundred and fifty; and the Secretary of the Treasury is hereby directed to pay the principal and interest of said sum to the said Eastern Cherokee Indians, per capita, in accordance with the ninth article of the treaty of eighteen hundred and forty-six."

The case was brought to a hearing on its merits on the 24th day of March, 1902. Robert L. Owen, esq., was heard for the Eastern Cherokees residing in the Indian Territory; Mrs. Belva A. Lockwood was heard for certain individual Cherokees residing, some in the Indian Territory and some in the State of North Carolina; R. V. Belt, esq., was heard for the Eastern Cherokees residing in the State of North Carolina and in other States east of the Mississippi, and L. T. Michener, esq., was heard for the Cherokee Nation; and the Attorney-General, by George H. Gorman, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. At the time of the signing of the treaty between the United States and the Cherokee Nation, December 29, 1835 (7 Stat. L., p. 478), commonly known as the treaty of New Echota, several thousand Cherokees had removed from the Cherokee country east of the Mississippi and were settled in what is now the Indian Territory. To distinguish them from the Cherokees who remained in the Cherokee country they were popularly called and known as the Western Cherokees. After the removal of the Cherokee Nation to the Indian Territory, in pursuance of the treaty, the term Western Cherokees was no longer distinctive, and the members of the nation who had been known as such were thereafter popularly known as the "Old Settlers." Bu the Cherokees who removed to the Indian Territory after the signature of the treaty of December 29, 1835, as well as those who remained permanently east of the Mississippi, continued to be popularly known as the Eastern Cherokees; and all Eastern Cherokees, by virtue of their individual communal rights as members of the Cherokee Nation, are the parties claimants in this suit.

II. The claims presented by and considered in this suit sprang out of the treaty concluded at New Echota, in the State of Georgia, on the 29th day of December, 1835 (7 Stat. L., p. 478), the subsequent treaties between the United States and the Cherokee Nation having been made and entered into to compromise and settle differences of construction which had been given by the parties respectively to the treaty and to correct errors and mistakes which had been made by the officers and agents of the United States.

III. At the time when the treaty of 1835 was framed it was assumed by the authorities of the United States that the treaty fund of $5,000,000, after the payment of the specific charges upon the fund, would leave a surplus sufficient to pay for the removal of the Cherokees to their new home in the Indian Territory and for one year's subsistence after arriving there, and would still leave an additional surplus to be distributed per capita among the individual members of the community—that is, the Eastern Cherokees. But before effect was given to the treaty it was ascertained that the surplus remaining after satisfying the specific charges upon the fund would be insufficient to meet the expenses of the removal of the Cherokees and of their subsistence in the Indian Territory. Accordingly, by the supplementary articles of the treaty bearing date March 1, 1836 (7 Stat. L., p. 488), an additional amount of $600,000 was "allowed to the Cherokee people to include the expense of their removal and all claims of every nature and description against the Government of the United States not herein otherwise specifically provided for." This sum of $600,000 was to be "applied and distributed agreeably to the provisions of the said treaty, and any surplus which might remain after removal and payment of the claims so ascertained" was to be "turned over and belong to the education fund." But this additional amount of $600,000 was insufficient for the purposes intended, and a portion of it was applied to other purposes, leaving nothing to be distributed per capita among the Cherokees.

IV. The cost of the removal of the Cherokees from Georgia to the Indian Territory, paid and expended by the United States, was $1,493,485.92, of which amount $335,105.91 was contributed by the United States, being derived from the $600,000 treaty fund of 1836, and $1,111,284.70 was contributed by the Cherokees, being derived from the $5,000,000 treaty fund of 1835. The cost of subsisting the Cherokees after their arrival in the Indian Territory was subsequently refunded to the treaty fund of $5,000,000 and paid to the Cherokees, as hereinafter shown.

V. Of the amount paid by the United States for the removal of the Cherokees from Georgia to the Indian Territory, $1,493,485.92, as set forth in the preceding finding, $137,740 was expended for the removal of 2,200 Cherokees who had voluntarily emigrated (27 Ct. Cls. Reports, p. 3, Finding III) at a cost to the Government of $61.70 per capita (Senate Doc. No. 215, Fifty-sixth Congress, first session, p. 78); and $1,357,745.92 was paid to John and Lewis Ross for the removal of the remainder of the Cherokees in 1838. (Sen. Doc., supra.)

Of the total $1,493,485.92 paid for removal, as above set forth, $382,201.22 was paid out of the amount appropriated, $1,647,067, by the acts of July 2, 1836, and June 12, 1838, the balance, $1,111,284.70, being charged against the $5,000,000 fund, as before set forth, and still remaining a charge against that fund. (Senate Doc. 215, Fifty-sixth Congress, first session, p. 95.)

VI. Immediately after the execution of the treaty of New Echota and before the removal of any members of the nation, the Cherokees declared and protested that they had been led to believe that the cost of removal and subsistence was to be borne

exclusively by the United States and was not to be a charge upon the treaty fund, and they refused to remove to the West. Previous to the signature of the treaty, and before the Cherokees consented to remove to the West, the following transactions occurred.

On March 5, 1835, the Senate of the United States, by resolution, advised:

"That a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi River." (Senate Doc. 215, Fifty-sixth Congress, first session, p. 77.)

On March 14, 1835, a treaty was drawn up by J. F. Schermerhorn, commissioner on the part of the United States, for submission to the Cherokees, in which it was proposed that the sum of five million dollars should be paid to them for their lands and possessions in accordance with the foregoing resolution of the Senate, but that there should be deducted from the said sum of five millions of dollars two hundred and fifty-five thousand dollars for the expenses of the removal of the members of the tribe. (Ibid., 81 and 82.)

At this time the treaty of 1828 (7 Stat. L., 313) was in full force, by the eighth article of which it was provided that the United States would pay the cost of removal of the Cherokees from the East to the West.

This proposed treaty was rejected by the Cherokee council on October 23, 1835, for the reason that the expense of removal was proposed to be charged to the five-million-dollar fund (Ibid., 831, par. 5). The rejection of this treaty was unanimous. (Senate Doc. No. 120, Twenty-fifth Congress, second session, 459.)

During the consideration of this proposed treaty by the Indians, a letter from President Jackson, bearing date March 16, 1835, was read to the Cherokees, purporting to explain the proposed treaty. That letter is as follows:

"I shall in the course of a short time appoint commissioners for the purpose of meeting the whole body of your people in council. They will explain to you more fully my views and the nature of the stipulations which are offered to you.

"These stipulations provide—

"1st. For an addition to the country already assigned to you west of the Mississippi, and for the conveyance of the whole of it by patent in fee simple, and also for the security of the necessray political rights, and for preventing white persons from trespassing upon you.

"2d. For the payment of the whole value to each individual of his possessions in Georgia, Alabama, North Carolina, and Tennessee.

"3d. For the removal, at the expense of the United States, of your whole people; for their subsistence for a year after their arrival in their new country, and for a gratuity of one hundred and fifty dollars to each person.

"4th. For the usual supply of rifles, blankets, and kettles.

"5th. For the investment of the sum of four hundred thousand dollars, in order to secure a permanent annuity.

"6th. For adequate provisions for schools, agricultural instruments, domestic animals, missionary establishments, the support of orphans, etc.

"7th. For the payment of claims.

"8th. For granting pensions to such of your people as have been disabled in the service of the United States.

"These are the general provisions contained in the arrangement. But there are many other details favorable to you which I do not stop here to enumerate, as they will be placed before you in the arrangement itself. Their total amount is four million five hundred thousand dollars, which, added to the sum of five hundred thousand dollars, estimated as the value of the additional land granted you, makes five millions of dollars—a sum, if equally divided among all your people east of the Mississippi, estimating them at ten thousand, which I believe is their full number, would give five hundred dollars to every man, woman, and child in your nation. There are few separate communities whose property, if divided, would give to the persons composing them such an amount." (Senate Doc. No. 215, Fifty-sixth Congress, first session, 82.)

After the signature of the treaty the leaders of the treaty party who signed the treaty contended that the sum of $5,000,000 was not intended to include the amount which might be required to remove them. The President was willing that this subject should be referred to the Senate for its consideration, to the end that if the expense of removal was not to be charged to the treaty fund such further provisions should be made therefor as might appear to the Senate to be just. The Senate thereupon agreed that the sum of $600,000 should be allowed to the Cherokee people to include the expense of their removal. This sum was estimated as more than sufficient to pay the cost of such removal, and it was provided that whatever surplus remained after the payment of the expenses of removal, and certain other claims, should be turned over and belong to the education fund. (7 Stat. L., p. 489; 1 Supp., art. 3.)

On July 2, 1836, Congress confirmed the action of the Senate and appropriated the $600,000. (5 Stat. L., p. 73.)

In May, 1838, the President transmitted to Congress a letter from the Secretary of War to John Ross, principal chief of the Cherokee Nation, bearing date of May 18, 1838, in which it was said:

"If it be desired by the Cherokee Nation that their own agent should have charge of their emigration, their wishes will be complied with and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect; with regard to the expense of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made of Congress."

This last communication was transmitted to Congress; and on May 23, 1838, the House of Representatives, by resolution, required a statement of the amount necessary to pay for the removal and subsistence of the Cherokees. (Ibid., 78.) On May, 25, 1838, the Secretary of War submitted an estimate to the Speaker of the House of Representatives "of the amount that would be required" to remove 15,840 Cherokees and to subsist 18,336 Cherokees, stating that the sum necessary for this purpose was $1,047,067 (Ibid., 78); and on June 12, 1838, Congress appropriated the amount of this estimate with the provision that no part of it should pe deducted from the $5,000,000 fund. (5 Stat. L., 242.)

Without further appropriation the removal of the Indians (except a small number which never removed) was accomplished.

VII. The treaty of 1846 between the United States and the Cherokee Nation was entered into to restore peace and harmony among the Cherokee factions, to settle the claims of the Indians against the United States (preamble, treaty 1846, 9 Stat. L., p. 871), and "to make the Eastern and Western Cherokees parties to the treaty of New Echota, which they had never conceded themselves to be." Western Cherokee Indians *v.* The United States. (27 Ct. Cls., 36, par. 5.)

At the time when the treaty with the Cherokees of August 6, 1846 (9 Stat. L., p. 871), was being negotiated, the Cherokees insisted that the treaty fund had been improperly charged with various sums which ought to be corrected, and that they should receive from the United States a fair and just settlement which should only exhibit money properly expended under the treaty of 1835. Accordingly, when the treaty of 1846 was drawn up it was provided in article three that various sums which had been improperly charged to the five million dollar fund should be reimbursed, to wit:

Those sums paid for rents under the name of improvements and spoliations for property of which the Indians were dispossessed, and under the head of reservations, and under the head of expenses of making the treaty of New Echota; and the United States agreed to reimburse all other sums paid to any agent of the Government and improperly charged to said fund. (9 Stat. L., 872.)

By the ninth article of the treaty, arranging the general plan of settlement, it was provided as follows:

"The United States agrees to make a fair and just settlement of all moneys due to the Cherokees, and subject to the per capita division under the treaty of the twenty-ninth of December, eighteen hundred and thirty-five, which said settlement shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliations, removal, subsistance, and commutation therefor, debts and claims upon the Cherokee Nation of Indians for the additional quantity of land ceded to said nation; and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation; and also all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of six million six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due shall be paid over, per capita in equal amounts, to all of those individuals, heads of families or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplements of 1836, being all those Cherokees residing East at the date of said treaty and the supplement thereto." (9 Stat. L., 875.)

This amount of six million six hundred and forty-seven thousand and sixty-seven dollars was made up as follows:

The treaty fund of 1835	$5,000,000
Supplementary-articles fund	600,000
Appropriation act, June 12, 1838 (5 Stat. L., 242)	1,047,067
Total	6,647,067

The treaty also provided that, whereas the Cherokee delegation contend that the amount expended for the one year's subsistence after the arrival in the West of the Eastern Cherokees is not properly chargeable to the treaty fund, it was thereby agreed that the question should be submitted to the Senate of the United States for its decision, which should decide whether the subsistence was to be borne by the United States or by the Cherokee funds; and if by the Cherokees, then to say whether the subsistence should be charged at a greater rate than thirty-three and thirty-three one-hundredths dollars per head; and also the question whether the Cherokee Nation should be allowed interest on whatever sum should be found to be due the nation, and from what date and at what rate per annum.

The Senate of the United States, acting as umpire under article eleven of the treaty of 1846, on September 5, 1850, passed the following resolution:

"*Resolved by the Senate of the United States*, That the Cherokee Nation of Indians are entitled to the sum of one hundred and eighty-nine thousand four hundred and twenty-two dollars and seventy-six cents for subsistence, being the difference between the amount allowed by the act of June 12, 1838, and the amount actually paid and expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the Treasury.

"*Resolved*, That it is the sense of the Senate that interest at the rate of five per cent per annum should be allowed upon the sums found due to the Eastern and Western Cherokees, respectively, from the twelfth day of June, eighteen hundred and thirty-eight, until paid." (Sen. Journal, Thirty-first Congress, first session, p. 602.)
602.)

This last amount was accordingly appropriated by Congress for that purpose by the act of September 30, 1850, with the provision that interest be paid on the same at the rate of five per cent per annum, according to a resolution of the Senate of the 5th of September, 1850. (9 Stat. L., 556.)

VIII. Under the ninth article of the treaty of 1846 the accounting officers of the United States made and prepared the account for settlement prescribed by that article, whereby it appears that after crediting the treaty fund of five million dollars with the cost of subsistence of the Indians at the West, with which it had been charged, there would remain a balance of nine hundred and fourteen thousand and twenty-six dollars and thirteen cents. Congress accordingly appropriated, in addition to the amount of one hundred and eighty-nine thousand four hundred and twenty-two dollars and seventy-six cents, which had been appropriated pursuant to the resolution of the Senate, seven hundred and twenty-four thousand six hundred and three dollars and thirty-seven cents; and there was thereupon paid and distributed to the Eastern Cherokees, per capita, the above amounts, with interest thereon at five per cent from June 12, 1838, the same being paid and accepted under the act of September 30, 1850 (9 Stat. L., p. 556), which provided—

"That said money shall be paid by the United States and received by the Indians on condition that the same shall be in full discharge of the amount thus improperly charged to the said treaty fund."

And under the act of February 27, 1851, which provided—

"That the sum now appropriated shall be in full satisfaction and a final settlement of all claims and demands whatsoever of the Cherokee Nation against the United States, under any treaty heretofore made with the Cherokees. And the said Cherokee Nation shall, on the payment of such sum of money, execute and deliver to the United States a full and final discharge for all claims and demands whatsoever on the United States, except for such annuities in money or specific articles of property as the United States may be bound by any treaty to pay to said Cherokee Nation, and except also such moneys and lands, if any, as the United States may hold in trust for said Cherokees."

On the 27th of November, 1851, the Cherokee national council, before the payment of any of said money or making any receipt therefor, passed a formal protest against the treaties of December 26, 1835, and the 6th of August, 1846, and the settlement made under their provisions, using in said protest the following language with reference to the expenses of the removal:

"Because no allowance is made for the sums taken from the treaty fund for removal to the West, although that charge depended upon precisely the same words in the treaty of 1835 as did the one year's subsistence; and the Senate unanimously decided upon the question submitted to them as arbitrators that the item of subsistence was not a proper charge upon the Cherokee fund. That had been the decision of the Senate about the date of the treaty when that question was specially presented. It was so considered by Mr. Poinsett, Secretary of War, in June, 1838, and his decision was sanctioned by act of Congress and an appropriation was made for that purpose. But the estimates being too small by half, the Indian fund was then for the first time seized upon."

This protest was transmitted to and received by the Commissioner of Indian Affairs during the month of April, 1852.

Thereafter the said total amount of $914,026.13 was duly paid and distributed to and among the Cherokees, and the Cherokees executed to the United States the full and final discharge of all claims and demands whatsoever on the United States, as required by the statute aforesaid. This discharge was in the form following:

"We, the undersigned Emigrant or Eastern Cherokees, do hereby acknowledge to have received from John Drennen, Superintendent of Indian Affairs, the sums opposite our names, respectively, being in full of all demands under the treaty of sixth of August, eighteen hundred and forty-six, according to the principles established in the ninth article thereof, and appropriated by Congress per act 30th of September, 1850, and per act 27th of February, 1851, which reads as follows: 'And the said Cherokee Nation shall, on the payment of said sum of money, execute and deliver to the United States a full and final discharge for all claims and demands whatsoever on the United States, except for such annuities in money or specific articles of property as the United States may be bound by treaty to pay to said Cherokee Nation, and except also such money and lands, if any, as the United States may hold in trust for said Cherokees.'"

IX. At the time of the negotiations for the sale of the lands belonging to the Cherokee Nation, known as the "Cherokee Outlet," in 1891, the Cherokees again renewed their contention that their five-million-dollar trust fund had been improperly charged with the expense of the removal to the Indian Territory. Accordingly, on the 19th of December, 1891, an agreement was entered into between the Cherokee Nation and the United States for the sale of the Cherokee Outlet, being the agreement referred to and described in the act of March 3, 1893 (27 Stat. L., 640, sec. 10), whereby it was provided, among other things, that—

"Fourth. The United States shall, without delay, render to the Cherokee Nation, through any agent appointed by authority of the national council, a complete account of moneys due the Cherokee Nation under any of the treaties ratified in the years 1897, 1819, 1825, 1828, 1835–36, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting, should the Cherokee Nation, by its national council, conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within twelve months to enter suit against the United States in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from, or improperly or unjustly or illegally adjusted in said accounting; and the Congress of the United States shall at its next session, after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation, should judgment be rendered in her favor; or if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation, upon the order of its national council, such appropriation to be made by Congress, if then in session, and if not, then at the session immediately following such accounting." (Senate Ex. Doc. No. 56, Fifty-second Congress, first session, 27 Stat., 643.)

Congress on March 3, 1893 (27 Stat. L., 640), ratified the Cherokee agreement and on the same day (27 Stat. L., 643) appropriated five thousand dollars for the employment of experts to render a complete account of moneys due the Cherokees as required in the fourth subdivision of article two of said agreement. Under this provision Messrs. James A. Slade and Joseph T. Bender were appointed commissioners to render the account referred to in such agreement. The commissioners made their report, bearing date April 28, 1894, whereby, among other things, they reported that "The foregoing statement covers, it is believed, every point at issue which can be raised under the treaties described in the articles of agreement, and the result of the finding is submitted in the following schedule:"

"Under the treaty of 1835: Amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to the treaty fund, $1,111,284.70, with interest from June 12, 1838, to date of payment."

But whether said sum of one million one hundred and eleven thousand two hundred and eighty-four dollars and seventy cents ($1,111,284.70) was or was not improperly charged to the treaty fund, and whether interest should be allowed thereon, are questions of law upon which the court expresses no opinion.

X. The account as thus stated by Messrs. Slade and Bender was rendered to the Cherokee Nation and duly accepted by act of their national council in the manner and form provided in the agreement, and no suit has been brought by the Cherokee

Nation against the United States in the Court of Claims charging that such account was incorrect or unjust.

By the Court.

Filed April 28, 1902.
A true copy.
Test this 29th day of April, 1902.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

Exhibit No. 2.

Department of the Interior,
Office of Indian Affairs,
Washington, July 25, 1906.

I, C. F. Larrabee, Acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears of record in this Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed on the day and year first above written.

[SEAL.]

C. F. Larrabee,
Acting Commissioner.

Know all men by these presents, that this contract, executed and approved in the manner prescribed in sections 2103 to 2106, both inclusive, of the Revised Statutes of the United States, and in the pursuance of the provisions of section 68 of an act of Congress entitled "An act to provide for the allotment of lands in the Cherokee Nation and the disposition of town sites therein, and for other purposes," approved by the President of the United States July 1st, 1902, and ratified by the Cherokee people at a popular election held August 7th, 1902, is made by and between the Cherokee Nation, acting through its principal chief, Thomas M. Buffington, whose occupation is that of the principal chief of the Cherokee Nation, and whose residence is in the town of Vinita, in the Indian Territory, party of the first part, and the firm of Finkelnburg, Nagle & Kirby, composed of Gustav A. Finkelnburg, Charles Nagle, Daniel N. Kirby, Gustav F. Decker, Allen C. Orrick, and Arthur B. Shepley, whose residences are in the city of St. Louis, State of Missouri, the occupation of each of whom is that of attorney at law, and which firm is party of the second part; and Edgar Smith, whose residence is in the town of Vinita, Indian Territory, and whose occupation is that of attorney at law, and who is party of the third part.

The purpose for which this contract is made is to secure the services of the parties of the second and third part as attorneys and counsellors at law for the Cherokee Nation. The special thing to be done under this contract by the parties of the second and third part is to represent said nation as attorneys in the Court of Claims of the United States and in the Supreme Court of the United States (if any appeal is taken) in the case hereinafter mentioned—that is to say, in the prosecution of the claim of the Cherokee Nation against the United States, which claim is commonly known as the "Slade-Bender award," and grew out of and described in the agreement between the Cherokee Nation and the United States for the purchase of what is known as the Cherokee Outlet.

This contract is to run from the 16th day of January, 1903, until the 1st day of January, 1907, or until said claim is prosecuted to a final determination and the judgments obtained thereunder (if any) are paid, as provided in said act of Congress.

The rate per centum of fee to be paid to the parties of the second and third part in full for their services under this contract shall be as follows:

Five per centum upon the first million dollars, or part thereof, collected, and two and one-half per centum upon the amount collected over and above the said first million dollars. The disposition to be made of the money when collected under this contract shall be as provided in section 68 of the act of Congress aforesaid; the compensation aforesaid to be paid to the said parties of the second and third part by the proper officers of the United States shall be deducted from the amount recovered and by the said officers paid direct to the said parties of the second and third part.

The scope and authority for the execution of this contract are set forth in section 68 of the said act of Congress, approved by the President and ratified by the Cherokee Nation as aforesaid, and no contingent matter or condition, except as herein set forth, constitute any part of this contract; and by virtue of and under the authority of said act of Congress the party of the first part has employed, and by these presents doth

employ, the parties of the second and third part to represent said Cherokee Nation in said courts in the city of Washington, District of Columbia, as attorneys of said nation in the prosecution to a final determination and payment of the said claim, for and during the time aforesaid, and for the compensation aforesaid, hereby giving to said attorneys full power and authority in the premises to do and perform all things whatsoever that may be necessary and lawful in the prosecuting of the said claim, and for the securing payment by the United States of any judgment that may be recovered by the said nation against the United States, as provided in said act of Congress, to sign and execute all papers that may be required on behalf of said nation, hereby ratifying and confirming all the lawful acts of said attorneys done in pursuance of the authority of this contract.

The parties of the second and third part hereby accept the employment herein set forth and provided for upon the terms and conditions herein set forth, and they will, to the best of their ability, do and perform the services stipulated and required by this contract.

Witness our hands and seals this 16th day of January, 1903, and executed in triplicate.

THOMAS M. BUFFINGTON. [SEAL.]
Principal Chief of the Cherokee Nation.

FINKELNBURG, NAGEL & KIRBY. [SEAL.]
Attorneys at Law.

EDGAR SMITH. [SEAL.]
Attorney at Law.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Edward F. Bingham, one of the justices of the supreme court of the District of Columbia, which is a court of record, do hereby certify that the above contract was executed before me on the 16th day of January, 1903, by Thomas M. Buffington, principal chief of the Cherokee Nation, and acting for said nation, party of the first part, and by Charles Nagel, a member of the firm of Finkelnburg, Nagel & Kirby, acting for said firm, and by Edgar Smith, parties of the second and third part, in my presence; that the interested parties therein are the Cherokee Nation, which is represented by the said Thomas M. Buffington, who is the principal chief of the said nation, and Finkelnburg, Nagel and Kirby, composed of Gustav A. Finkelnburg, Charles Nagel, Daniel N. Kirby, Gustav F. Decker, Allen C. Orrick, and Arthur B. Shepley, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory, as stated to me at the time; that the parties present were the said Thomas M. Buffington and the said Charles Nagel and the said Edgar Smith; that the source and extent of the authority claimed by the said contracting parties to make said contract was, and is, section 68 of the act of Congress, the title of which is set forth in said contract, and that the said contract was signed and executed, for the purpose and consideration therein stated and set forth, by the said Thomas M. Buffington and by the said Charles Nagel and by the said Edgar Smith, who are personally well known to me and who appeared before me at the court-house in the city of Washington, District of Columbia.

E. F. BINGHAM,
Chief Justice, Supreme Court, D. C.

Supreme Court of the District of Columbia, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify that Edward F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 16th day of January, 1903.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
January 16, 1903.

The within contract is hereby approved.

W. A. JONES, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
January 16, 1903.

Approved.
[SEAL.]

E. A. HITCHCOCK, *Secretary.*

Exhibit No. 3.

[Supreme Court of the United States, October term, 1905. No. 346.—The United States, *appellant*, *vs.* The Cherokee Nation. No. 347.—The Eastern Cherokees, appellants, *vs.* The United States and The Cherokee Nation. No. 348.—The Cherokee Nation, appellant, *vs.* The United States.]

Appeals from the Court of Claims.

Reply Brief for the Cherokee Nation.

The Cherokee Nation is a body politic. As such it was and still is competent to prosecute this suit in the name which the persons collectively composing the body long since assumed and by which such persons acting collectively have been recognized and dealt with for many years past by the United States.

In an hysterical memorandum prefixed to their main brief, counsel for the Eastern Cherokees explain that though in said brief they have referred to the Cherokee Nation as a "body politic" "in the sense and to the extent only that it might be regarded as a government," nevertheless they "emphatically deny that the Cherokee Nation is a body politic, and do not concede that it ever has been a body politic or a body corporate recognized as such by the United States.

In both their main and reply brief they indicate a belief that there is a distinction appreciable, though subtle, between the Cherokee Nation when considered "as a tribe of Indians" and "as a body politic," and on page 4 of the latter brief they say:

"It is obvious the suit of the Cherokee government appearing under the title 'Cherokee Nation' should have been brought by the title 'Cherokee tribe' as instructed by the jurisdictional act. The tribe furnished the outlet, and the tribe was the principal in that contract of December 19, 1891, while the Cherokee government designated 'Cherokee Nation' was merely an agency through which the tribe acted. The agent is dead. The tribe survived."

The distinction sought to be drawn and the results which are supposed to follow from such distinction, if it exists, may not be of serious moment, but in order that one may not be misled either by the confusion of ideas under which counsel appear to labor or by the inaccurate statements of fact, it may not be amiss to reply briefly to these suggestions.

The first petition filed in these consolidated cases was filed in the name of the "Cherokee Nation," and asserted that said nation was "acting in its own behalf and in behalf of the individuals who are members and citizens of said nation and interested in the subject-matter of this petition," and averred that—

"The Cherokee Nation, claimant herein, is and since the act of union between the Eastern Cherokees and Western Cherokees, on July 12, 1839, has been a body politic recognized and dealt with as such by the United States in all matters affecting the rights, interests, and property of the Cherokee Nation or tribe, or the members thereof; and is as such the 'Cherokee tribe' mentioned in section 68 of the act of Congress aforesaid (July 1, 1902) and authorized thereby to bring this proceeding."

An early edition of Bouvier defines "body politic" to be—

"The collective body of a nation under civil government. As the persons who compose the body politic so associate themselves, they take collectively the name of the people or nation."

A more recent authority (the Century Dictionary and Cyclopedia) under the word "politic," proffers this definition:

"That (what) constitutes the State; consisting of citizens; as the body politic (that is, the whole body of the people as constituting a State)."

And cites by way of illustration a portion of the preamble of the "Covenant of Plymouth Colony," as follows:

"We the loyal subjects of * * * King James * * * do by these presents solemnly and mutually, in the presence of God and one another, covenant and combine ourselves into a civil body politic." * * *

A State is undoubtedly a body politic, and the terms "nation" and "State" are frequently employed not only in the law of nations, but in common parlance as importing the same thing; but it is said that the term "nation" is more strictly synonymous with people than with the term "State," and while a single State may embrace different nations or peoples, a single nation may be so divided politically as to constitute several States.

As early as 1831 this court decided that the Cherokee people constituted a State and that they had been uniformly treated as such "from the settlement of our country. The numerous treaties made with them by the United States, recognized them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for a violation of their engagements, or for any aggression

committed on the citizens of the United States, by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our Government plainly recognize the Cherokee Nation as a State, and the courts are bound by those acts." (Cherokee Nation *vs.* Georgia, 5 Peters 1, 16.)

Since the rendition of that judgment the right of the Cherokee people to maintain an action in the name of the Cherokee Nation would seem to have been put beyond dispute.

When the ancient Cherokee Nation, by an agreement amongst its citizens, approved by the United States, separated into two bodies, such bodies so long as they remained separate communities possessed severally all the attributes of political sovereignty which the ancient nation had theretofore possessed, and were so recognized by the United States.

When in 1839 the Eastern and Western Cherokees became reunited, they declared in a solemn act of union seemingly modeled upon the declaration of the Plymouth Colony above quoted that—

"We, the people composing the Eastern and Western Cherokee nations, in national convention assembled, by virtue of our original and unalienable rights, do hereby solemnly and mutually agree to form ourselves into one body politic under the style and title of the Cherokee Nation. * * * And, also, that all rights and titles to public Cherokee land on the east or west of the Mississippi River, with all other public interests which may have been vested in either branch of the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee Nation as constituted by this union."

Notwithstanding learned counsel for the Eastern Cherokees solemnly deny that any such act of union was adopted or, if adopted, that it had any valid force, still such act of union has heretofore been recognized by this court (The Cherokee Trust Funds, 117 U. S., 288, 303–5; United States *vs.* Old Settlers, 148 U. S., 427, 444), and the "Cherokee Nation" thereby created has been repeatedly recognized by the Congress (treaty August 6, 1846; treaty July 19, 1866; treaty April 27, 1868; agreement of December 19, 1891, for sale of Cherokee Outlet, as ratified and confirmed by act of March 3, 1893, and other acts and appropriation laws too numerous to cite).

It is true that section 68 of the act of July 1, 1902, confers jurisdiction upon the Court of Claims to adjudicate any claim which the "Cherokee tribe, or any band thereof," may have against the United States, but it is also true that section 1 of said act specifically declares that—

"The words 'nation' and 'tribe' shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory."

Whatever criticism might have been justified by the institution of this action under the title of "The Cherokee Tribe," it would seem to be certain that no foundation for just criticism arises out of the fact that it was instituted under the title of "The Cherokee Nation."

Again, it is asserted by learned counsel for the Eastern Cherokee (Reply Brief, pp. 2–3) "that the 'Cherokee Nation' as a government did not own the Outlet. The Outlet was the property of the Cherokee tribe, 'of the whole Cherokee people,' under article 1, treaty of 1846."

This suggestion was laid at rest forever by the decision of this court in the case of the Cherokee Trust Funds (117 U. S., 288, at p. 308), where, considering the claim of the Western Cherokees to exclusive participation in the proceeds of the sales of certain lands in the Cherokee Outlet, under the provisions of the treaty of July 19, 1866, this court said:

"Their claim, however, rests upon no solid foundation. The lands from the sales of which the proceeds were derived belonged to the Cherokee Nation as a political body and not to its individual members. They were held, it is true, for the common benefit of all the Cherokees, but that does not mean that each member had such an interest as a tenant in common that he could claim a pro rata proportion of the proceeds of sales made of any part of them. He had a right to use parcels of the lands thus held by the nation, subject to such rules as its governing authority might prescribe, but that right neither prevented nor qualified the legal power of that authority to cede the lands and the title of the nation to the United States. Our Government, by its treaties with the Cherokees recognized them as a distinct political community and so far independent as to justify and require negotiations with them in that character. Their treaties of cession must, therefore, be held not only to convey the common property of the nation, but to divest the interest therein of each of its members."

It has been repeatedly urged by counsel for the Eastern Cherokees that judgment should not be affirmed in favor of the "Cherokee Nation," because the nation could neither receipt for nor distribute the proceeds of any such judgment. Likewise the burden of complaint on the part of other counsel for individual Eastern Cherokees

was that if the judgment of the Court of Claims should be sustained and the nation as such permitted to distribute the proceeds thereof, such individual Eastern Cherokees would receive little or no consideration and would probably receive nothing as its share.

And, again, it is suggested that certain provisions of the acts of Congress of June 7, 1897, and June 28, 1898 (30 Stats., 62, 83, 502 et seq.), had had the effect of practically abolishing the Cherokee government, and that section 19 of the latter act had specifically prohibited the "payment of any moneys on any account whatever" "by the United States to any of the tribal governments or any officer thereof."

Without pausing to consider whether in fact either of the last-mentioned statutes has any real bearing upon the matter in hand, it would seem to be sufficient to say that the Congress itself by the act of July 1, 1902 (32 Stats., 716), authorizing the Cherokee Nation in express terms to institute this suit, distinctly recognized the continued existence of the "tribal government of the Cherokee Nation," and with the assent of the nation itself provided for its discontinuance only after March 4, 1905 (sec. 63, act July 1, 1902, 32 Stats., 716).

It is true that for some years past the Cherokee Nation has been without tribal courts, and by paramount authority its people and their property rights have been subjected to the judicial processes of the courts of the United States, but that fact has not served to lessen the hold of the nation upon the national property or funds or claims.

If it be true that by the provisions of the act of June 28, 1898, alluded to, and to the terms of which the Cherokee Nation seemingly did not assent, the United States was prohibited from making payments to the tribal government or any officer thereof for disbursement, that fact would be of no moment here, for the Cherokee Nation is not asking the payment of the proceeds of this judgment to itself in its tribal or governmental capacity or to any of its officers, so that it or he may control the distribution thereof. On the contrary, the Cherokee Nation, claimant, recognizing the binding force of the various provisions of the jurisdictional act of July 1, 1902, complains of the judgment of the Court of Claims upon the sole ground that that court has directed the distribution of the proceeds of the judgment, which proceeds would clearly constitute "monies accruing under the provisions of this act" (sec. 66) in a manner other than that distinctly prescribed in said act, to which the legal voters of the Cherokee Nation in national election assembled fully assented.

Both the act of 1898, upon which counsel for the Eastern Cherokees lean, and said act of 1902 provide for the distribution of national and per capita funds through the Secretary of the Interior. Neither the Cherokee Nation, nor its national council, nor any of its executive officers pretend any claim of right to receive, either officially or individually, the proceeds of any judgment which may go in favor of the nation, but they do assert that such proceeds when payable will constitute common property of the nation or tribe, distributable in accordance with the terms of the act of 1902, and not otherwise.

If the act of March 3, 1903, be supposed to authorize any different method of distribution of common property than that provided for by said act of 1902, then it is to such extent at least invalid, for it has never received the assent of the communal owners of the property affected by it.

It is also said that the Cherokee Nation, as such, had prior to July 1, 1902, expressly conceded the exclusive right of the Eastern Cherokees to the proceeds of any judgment which might be obtained upon the item here in dispute. If this be true in point of fact, it does not so appear from the record in this cause, and no proof of such fact was offered.

It is quite true that attorneys for the Eastern Cherokees in their intervening petition filed in case No. 23199 (R., 39–40) asserted that the Cherokee national council, by an act on December 7, 1900, expressly conceded the exclusive right of the Eastern Cherokees to the moneys in question, but this averment was expressly traversed by the Cherokee Nation, which denied the existence of any such act as was described, and no proof in support of such averment was offered on behalf of the Eastern Cherokees. The fact is that if any such act was passed by the national council it was expressly disapproved by the President of the United States in the exercise of his supervisory authority under the act of Congress in such case provided (31 Stats., 1058, 1077).

If such supposed act of the Cherokee council constitutes the "last will and testament" of the Cherokee Nation, to which counsel refer on page 7 of their reply brief, it can have no effect upon this controversy, for it has been denied probate by an authority possessed of exclusive jurisdiction in the premises.

Whatever may have been the view of the Cherokee national council in the premises, it was clearly subject to the subsequent action of the Cherokee people composing the Cherokee Nation, as evidenced by the acceptance of the provisions of the act of July 1, 1902, which must constitute the rule and measure by which this branch of the contention before the court must be settled.

By that act and its ratification both the people of the nation and the Congress of the United States provided generally for the institution of the present suit on behalf of the former, and specifically indicated the manner in which attorneys on behalf of the nation should be employed and how they should be compensated. It is conceded that the Eastern Cherokees since 1839, by force of numbers, have dominated the Cherokee Nation. As the dominant party in the nation their votes served to ratify the agreement of July 1, 1902. It is not denied that the attorneys representing the nation have been employed and arrangements have been made for their compensation in accordance with the provisions of said agreement. Nor is it denied that they have rendered some service in the prosecution of the case. So far, such services appear to have been, to a degree at least, effective; whether ultimately they will appear to have been so must abide the mandate of this court. If the Eastern Cherokees for any reason deemed it desirable that they should be represented doubly before the trial and appellate tribunals, first, as members of the nation, and, second, as a separate band, they no doubt had the right to so elect and to contract accordingly; but exactly why their separate attorneys should seek to raise any question concerning the compensation of the attorneys for the nation is not perceived. If the judgment of the Court of Claims in favor of the nation should be affirmed, the contract heretofore entered into between the nation and its attorneys, formerly approved by the Commissioner of Indian Affairs and the Secretary of the Interior and filed in the Department of the Interior, as required by law, will probably be found to sufficiently protect the rights of the parties thereto. No question upon this score was determined by the Court of Claims, and in the absence of the contract itself or any copy thereof in the record it would seem to be open for consideration by this court. With respect to the allowances of fees and expenses to attorneys otherwise situated, all question was reserved by the Court of Claims until the coming in of the mandate of this court, and no question has been raised upon the record concerning such action.

Unless the judgment in favor of the Cherokee Nation by name should be affirmed, the question of the right of the attorneys appearing on behalf of the nation to receive compensation for services rendered will be of but little moment.

It is suggested, however, that this court should interfere in the matter of the allowance of fees to the attorneys for the nation because the nation is prosecuting this claim in opposition to the vast body of its citizens, viz. the Eastern Cherokees, and that, therefore, even in the event of a successful outcome, the proceeds of the judgment ought not to be reduced by the expenses of the nation in obtaining it because of the individual interest of the Eastern Cherokees therein. The fallacy of this objection is too obvious to require extended comment. The nation in prosecuting this claim is acting on behalf of all of its members, and with the assent of the majority of its members, as evidenced by their ratification of the act of 1902, under which the action was brought. Neither the nation nor its attorneys oppose the claim of the Eastern Cherokees as component members of the nation to recover under and through the latter their proportionate shares of the item in controversy, such shares to be determined and distributed as provided in the act of 1902. The sole opposition between the nation and the Eastern Cherokees, individually or as a band, grows out of the contention of the latter to an exclusive right which is put forth under the provisions of the act of March 3, 1903, to which act neither the nation nor its citizens ever assented. It does not appear, indeed, that either the nation or any of its component elements have ever been made aware of the terms of said act of 1903, nor can it be gleaned from the record at hand that the Eastern Cherokees are in fact represented by attorneys employed by "the band acting through a committee recognized by the Secretary of the Interior" or "by their proper authorities."

As above stated, the nation, as will appear from its petition, sues in its own behalf and "in behalf of the individuals who are members and citizens of said nation" (R., 1), and the denial contained in its replication (R., 40) must be read in the light of the above averment and held to refer, as was the intention, to the Eastern Cherokees acting as a band and not to refer to them in their individual capacities as citizens of the nation.

The futility of the claim of exclusive right put forth in behalf of the Eastern Cherokees generally is demonstrated by the decision and opinion of this court in the case of the Old Settlers *vs.* United States (148 U. S., 427, 471, et seq.), and the utter want of foundation for the suggestion of right of participation on the part of these Eastern Cherokees and their descendants who never went West, but severed their relations with the nation or tribe and became citizens of Georgia, will fully appear from a review of the opinion of this court in the case of The Cherokee Trust Funds (117 U. S., 288, 308–310).

The two cases last cited review all the complicated tangle of treaties and statutes pertaining to the relations between the United States and the Cherokee Nation prior to the agreement of December 19, 1891, which, together with the act of Congress of March 3, 1893, affords solid support for the present contentions on behalf of the nation. In the absence of the agreement of 1891 and the act of 1893 the pending claims in their present form as presented on behalf of the several claimants could not be maintained in favor of any of the claimants, notwithstanding the provisions of the act of July 1, 1902, for each of the claimants rests its claim upon the accounting made and rendered by the United States to the Cherokee Nation under the provisions of said act. In the absence of the act of 1893 such accounting, even if made, would have been without validity and of no binding force. It would seem that the Eastern Cherokees, acting as a separate band, could not rely upon the accounting rendered under the act of 1893 and the agreement of 1891 therein referred to, and at the same time avoid legal consequences which necessarily follow from their plain terms.

Under the treaty of 1846 the per capita distribution to both Western and Eastern Cherokees growing out of the sales of lands east of the Mississippi had been fully and, as it was then thought, finally provided for. Whatever else might be due from the United States on such account was communal and belonged to the whole Cherokee people as such. Both the Cherokee people and the United States so understood the matter as the agreement of 1891 and the act of 1893 amply evidence. It was the nation that assented that a balance was due to it on account of the cession of the lands east, and it was to the nation that the United States agreed to account and to pay any balance which might be found to be due. It was to the nation that the account showing a balance in its favor was submitted, and it was the nation, solemnly acting by resolution of its national council, that accepted the account as rendered and requested payment from the United States of such balance due. It was with the nation that the United States contracted as per the act of July 1, 1902, and the contract was none the less a national contract, because it provided therein that it was to be ratified by the majority vote of its qualified individual citizens.

This case presents complications and grave difficulties only when the contentions of the individuals, as opposed to the contention of the body politic, are brought into the foreground. So long as the matter is considered solely as between the United States and the Cherokee Nation, all questions pertaining both to the right of recovery and the method of distribution to ultimate beneficiaries are devoid of complexity, for elemental principles of law control the one, while the terms of the act of 1902 control the other.

It seems to be unnecessary to say anything further upon the subject of interest. By the account which the Interior Department, acting under the authority of Congress, as expressed in the act of 1893, rendered to the Cherokee Nation, the claim of the latter for interest upon the principal sums was expressly conceded and the principal items were declared to be due with interest from specified dates. Balances shown by said account rendered by the United States to be due to the nation "with interest at the rate of five per cent per annum from the various dates," &c., &c., was accepted by the latter as correct and payment thereof requested from Congress. The Congress has neither repudiated the account as rendered nor denied the right of the nation to receive interest as well as principal in payment.

The act of 1902 conferred jurisdiction upon the Court of Claims without restriction in either respect, and the principle which justified this court in giving judgment for interest in the Old Settlers case (ubi supra), when applied to the facts of this case, would seem to require the allowance of interest here.

The learned Assistant Attorney-General concedes that interest was properly allowed by the accountants upon three of the four items covered by the judgment under review, that with respect to such items the accountants had power and authority to consider the claim for interest, and if found to be well founded to award it. But he asserts that the same accountants in regard to the fourth item were without power to award interest, even though they may be found to have acted rightly in finding that the principal sum was due.

The power of the accountants and of their official superiors under the act of 1903 was the same with respect to one item as it was with respect to the other. No restrictions or limitations were laid upon them, save that the claims which they were to adjust by the account to be rendered were those relating to moneys "due to the Cherokee Nation" under certain specified treaties and laws of Congress. If they had authority to find for interest in respect of any item they had it in respect to all.

It has been strenuously contended on behalf of the United States that the "expert persons" employed under the act of 1893 to render the account of moneys due the Cherokee Nation exceeded the authority with which they were endowed, and in

proof of this reference is made to the communication of February 6, 1892, from the Commissioner of Indian Affairs to the Secretary of the Interior on the subject of an appropriation to be made for the purpose of defraying the expenses of the accounting (see brief on behalf U. S., p. 25), but the learned Assistant Attorney-General seems to have entirely overlooked the fact that both the Commissioner of Indian Affairs and the Secretary of the Interior approved and adopted their report when it was submitted in due course, and neither of those officials appears to have thought either that the accountants had exceeded their authority or had acted otherwise than had been contemplated at the time of their employment.

The contemporaneous acceptance of the result of their labors without objection on the part of the executive officials, whose duty it was to construe and execute the law under which the accountants were acting, should have great weight with any court, and the fact that Congress, when the report was brought to its attention, did not declare it invalid because not rendered in accordance with its prior law on the subject would seem to put an end to further contention on that score.

EDGAR SMITH,
CHARLES NAGEL,
FREDERICK D. MCKENNEY,
Attorneys for the Cherokee Nation.

EXHIBIT NO. 4.

Court of Claims.

THE CHEROKEE NATION, THE EASTERN CHEROKEES, The Eastern and Emigrant Cherokees. *vs.* THE UNITED STATES. } Nos. 23199, 23214, 23212.

I, Archibald Hopkins, chief clerk Court of Claims, hereby certify that the annexed, paged from 1 to 3, inclusive, is a true copy of the decree as to fees of counsel filed by the court May 28, 1906, in the above-entitled causes.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 25th day of July, A. D. 1906.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

[In the Court of Claims. The Cherokee Nation, The Eastern Cherokees, The Eastern and Emigrant Cherokees *vs.* The United States, Nos. 23199, 23214, 23212.]

These consolidated causes came on to be further heard upon the motion of the attorneys for the Eastern Cherokees for the modification of the original decree of May 18, 1905, in accordance with the mandate of the Supreme Court of the United States, heretofore presented; and it appearing to the court that by the said mandate it is provided that the second subdivision of the fourth paragraph of the said decree be modified so as to direct the distribution of the fund described in item two of the said decree to be made to the Eastern Cherokees as individuals, whether east or west of the Mississippi River, parties to the treaties of 1835–36 and 1846, exclusive of the Old Settlers, it is therefore so ordered and decreed.

And in accordance with said decree as it was directed to be, and is now, modified, it is further ordered and decreed that the Secretary of the Interior prepare, or cause to be prepared, a list or roll of all persons coming within the said description entitled to share in the distribution of said fund; and in preparing the said list or roll of such persons the Secretary of the Interior shall accept as a basis for the distribution of said fund the rolls of 1851, upon which the per capita payment to the Eastern Cherokees was made, and make such distribution in pursuance of article 9 of the treaty of 1846.

And this cause coming on to be further heard upon the application of Robert L. Owen and Robert V. Belt, attorneys of record for the Eastern Cherokees, and Mrs. Belva A. Lockwood, attorney of record in behalf of certian individual claimants styled "Eastern and Emigrant Cherokees," for the allowance of compensation to them and their associates as attorneys for the respective parties, and the court having considered the evidence offered by them and heard the argument of counsel, and being fully advised in the premises, and being of the opinion that a sum equal to fifteen per centum of the amount due and payable, under the terms of this modified decree, to the

Eastern Cherokees, to wit, one million one hundred and eleven thousand two hundred and eighty-four dollars and seventy cents, with interest from June 12, 1838, to date of payment, will be a reasonable compensation to the said Robert L. Owen and Robert V. Belt and their associates, attorneys for the Eastern Cherokees, and to Mrs. Belva A. Lockwood, attorney for certain individual claimants styled Eastern and Emigrant Cherokees, it is, therefore, this 28th day of May, 1906, adjudged, ordered, and decreed that out of said sum named in item two of the decree, payable to the Eastern Cherokees, there shall first be deducted an amount equal to fifteen per centum thereof, principal and interest, as the compensation of said attorneys.

And it further appearing to the court that of this fifteen per centum the sum of eighteen thousand dollars is a reasonable fee to be paid to the said Mrs. Belva A. Lockwood for her services rendered in this behalf, it is therefore ordered, adjudged, and decreed that out of the said amount there shall be paid to the said Mrs. Belva A. Lockwood the said sum of eighteen thousand dollars.

It is further ordered, adjudged, and decreed that the said fifteen per centum, less the deduction of the said eighteen thousand dollars, shall be distributed and paid to the following persons in the proportion named, to wit:

To John Vaile, 3 per cent of such gross recovery, less	$3,600
To Robert V. Belt, 1⅔ per cent of such gross recovery, less	2,000
To Scarritt & Cox, 2 per cent of such gross recovery, less	2,400
To James K. Jones, 1 per cent of such gross recovery, less	1,200
To Matthew C. Butler, 1½ per cent of such gross recovery, less	1,800
To William H. Robeson, 1½ per cent of such gross recovery, less	1,800
To Robert L. Owen 4½ per cent of such gross recovery, less	5,200

It is further ordered, adjudged, and decreed that the payment of the said fifteen per centum be made by the Secretary of the Treasury as herein directed immediately upon the appropriation by Congress for the payment of this judgment.

By the Court.

Filed May 28, 1906.

Exhibit No. 5.

In the supreme court of the District of Columbia, in equity.

Frank J. Boudinot, complainant,
v.
Ethan A. Hitchcock et al., defendants. } Equity, No. 26436.

Brief on Behalf of Complainant.

The solicitors for the complainant believe that it will not be out of place (and may somewhat lighten the labors of the court) if they file a brief in support of the rule to show cause heretofore issued in this case containing a short statement of the facts and of their views of the law applicable to them.

The printed opinions of the judges of the Court of Claims and of the Chief Justice of the Supreme Court of the United States contain such clear and lucid explanations of the terms "Cherokee Nation," "Cherokee Tribe," "Eastern Cherokee," and "Eastern and Emigrant Cherokees" that we do not think it necessary to attempt to explain these terms and their meaning further in this brief. It seems to us, too, to be equally apparent from an inspection of these papers as well as from a reading of section 68 of the act of Congress of July 1,1902, and of the record in the Supreme Court of the United States in the cases of the Cherokee Nation against the United States, the Eastern Cherokees against the United States, the Eastern and Emigrant Cherokees against the United States, and the United States against the Cherokee Nation, a printed copy of which has been furnished to your honor, that, for many years prior to the 16th day of January, 1903, when the contract between the Cherokee Nation, acting through its principal chief and the firm of Finkelnburg, Nagel & Kirby and Edgar Smith, is alleged to have been entered into and approved by the Secretary of the Interior, a bitter, hostile, and acrimonious dispute had existed between the Eastern Cherokees and the Cherokee Nation as to the true ownership of the fund of $1,111,-284.70, with interest; that this dispute was known and recognized as a bona fide dispute both by Congress and the Court of Claims, and that one of the objects, if not the sole object, of section 68 of the act of July 1,1902, was to give these various hostile claimants to said fund a court with ample jurisdiction over them all, in order that their hostile claims and pretensions might be finally adjudicated and put an end to.

We respectfully submit, therefore, that it can not with accuracy be contended that the litigation between these rival claimants arose only after the filing of the petition by the Cherokee Nation in the Court of Claims on the 20th of February, 1903, and that they then occupied the position of a trustee holding a fund, who, being anxious that a court might justly determine the rights of parties interested therein, had bona fide entered into a contract of employment of counsel to protect the fund and ascertain the just rights of cestui que trustents therein and thereto, but rather presents the case of a trustee setting up absolute ownership of the fund itself and denying any interest therein to anyone else. If this view of the case be the true one, we submit that the contract alleged to have been made by the Cherokee Nation is one which it and it alone is bound by, and the provisions of which it, and not the Eastern Cherokees or the fund awarded to them exclusively, is chargeable with.

A mere inspection of the brief filed on behalf of the Cherokee Nation by Messrs. Charles Nagel, Edgar Smith, and Frederic D. McKenney must satisfy your honor that the Cherokee Nation stood all through this contention and always has stood as the claimant of this property as a nation, as opposed to the claim of the Eastern Cherokees, either as a band or as individuals.

Bearing in mind that this is an application preliminary in its nature and intended merely for the conservation and preservation of the fund until proof can be taken where witnesses can be produced and compelled to testify under oath and under the authority and process of this court, and all the facts and circumstances surrounding the execution of this pretended contract may be brought to light, how it was executed, where it was executed, and why it was executed, where it was executed, we submit that the rule should not now be discharged.

WAS THIS A CONTRACT MADE BY THE CHEROKEE NATION?

It is not disputed that but for the peculiar language of section 68 of the act of July 1, 1902, the principal chief of the Cherokee Nation had no power to make a contract unless expressly authorized to do so by an act of the Cherokee council, and that he could only do so then while within the territorial limits of the Cherokee Nation. It is conceded, or rather is shown by the contract itself, that it purports to have been executed by Thomas M. Buffington, principal chief of the Cherokee Nation, in the city of Washington, where it was signed by all parties thereto and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, all in one day. It is contended that the power to perform this act by the principal chief instead of in accordance with the immemorial custom of the Cherokee Nation was intended to be conferred upon him by Congress, and his caprice and whim was intended to be substituted for such immemorial usage and custom because, tucked away in the last few lines of section 68, are the words "the said nation acting through its principal chief." Your honor will perceive that Congress does not say that the Cherokee Nation shall so act "by" its principal chief, but "through" its principal chief, and we respectfully submit that it is fair to argue that Congress, knowing the meaning of words, when it used the word "through" meant that after the nation had acted in council on the subject-matter the principal chief was to carry out their orders and formally execute the contract authorized by it in council, whereas if Congress had desired to deprive the nation, as such, of all power or discretion in the matter and to invest its principal chief with arbitrary, unlimited, despotic, and uncontrolled power, it would not have used the word "through" nor have left its intention in doubt.

But let us concede, for the sake of the argument, that the contract was duly executed and was binding upon the parties to it, what was its subject-matter? We submit that it could only be a subject-matter which the Cherokee Nation owned.

The court has decided that the Cherokee Nation did not own the fund in controversy, but that it belonged to the Eastern Cherokees, whether east or west of the Mississippi, exclusive of the "Old Settlers," and was to be distributed to them, not by the Cherokee Nation, but by the Secretary of the Interior, as individuals.

We respectfully submit, it is too narrow and strict a construction upon which to base the payment of fees for hostile action on the part of counsel upon the mere claim that somewhere in the judgment the court has said that it is in favor of the "Cherokee Nation," and neither the Cherokee Nation, as such, nor any individual, as such, is entitled to a dollar of beneficial interest in said judgment. The judgment is for the benefit of any Eastern Cherokee, as such, no matter whether he lives east or west of the Mississippi River, exclusive of the "Old Settlers," and without regard to the "Cherokee Nation," which under no circumstances is permitted to touch or handle a penny.

This is a court of equity administering justice, and while it may not have jurisdiction to control the judgment of the Secretary of the Interior as to the value of services alleged to have been rendered, it has unquestionably jurisdiction to say both whether

the contract has ever been entered into and to declare the subject-matter to which it refers. In this case it is conceded, or if not conceded, it is proved for the purposes of a hearing of this character, that on the 20th of April, 1901, the Eastern Cherokees, having organized themselves, made a contract with counsel for the protection of their interests in this fund. If the injunction in this case be now granted and the issues made up, it will unquestionably be proved that this contract was offered to the Secretary of the Interior for his approval and was rejected, and it will be further unquestionably established that, notwithstanding the failure and refusal of the Secretary of the Interior to approve this contract, Congress itself, by the act of March 3, 1903, did so, and went further and authorized the Court of Claims, in its judgment, to fix the compensation of counsel in accordance with the ideas expressed in that contract. It is already conceded in this case that the Court of Claims has acted in obedience to the provisions of the act of March 3, 1903, has allowed fifteen per cent of the total amount recovered to the counsel named in or provided for by the terms of said contract with the Eastern Cherokees, and that the sum of $740,555.31 has been paid by the Eastern Cherokee Indians out of this identical fund to their counsel for securing it to them and for successfully resisting the efforts of the "Cherokee Nation" to wrest it from them and deprive them of it.

No one can say that this is a just claim against the Eastern Cherokees or the fund belonging to them. No one pretends that Finkelnburg, Nagel & Kirby and Edgar Smith ever did them a dollar's worth of service or expended a moment of time upon their behalf. The original claim itself, out of which the controversy arose, was the child of an unjust retention by the Government of money belonging to the Eastern Cherokees and was a continual and continuing source of irritation and friction between the Government and the Indians, and the Government at length yielded to the Indian on every point and directed its courts to do him justice. It is but fair to say that if this fund is thus unjustly deducted from the money belonging to the Eastern Cherokees they will clamor, and successfully clamor, against such unjust treatment until the Government again will have to yield to them and pay this money twice.

We therefore respectfully submit that it is proper, prudent, and just for the court to stay this payment, at least at this stage of the cause, until all the circumstances and facts may be thoroughly investigated and the Government, as well as the Eastern Cherokees, be fully protected. Such action on the part of the court can do no material injury to any one, while a different course will but precipitate dissatisfaction, litigation, and possibly civil strife.

We respectfully submit that the injunction should be granted.

CHARLES POE,
SAMUEL A. PUTMAN,
Solicitors for Complainant.

EXHIBIT NO. 6.

Supreme court of the District of Columbia.

FRANK J. BOUDINOT, COMPLAINANT, *vs.* ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR of the United States, and Charles H. Treat, Treasurer of the United States, defendants.	Equity, No. 26436.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

BILL.

[Filed July 18, 1906, in the supreme court of the District of Columbia, holding an equity court.]

[Frank J. Boudinot, complainant, *vs.* Ethan A. Hitchcock, Secretary of the Interior of the United States, and Charles H. Treat, Treasurer of the United States, defendants. Equity No. 26436.]

To the honorable the judges of the supreme court of the District of Columbia.

The bill of complaint of Frank J. Boudinot respectfully represents:

1. That he is a citizen of the United States and a resident of the Indian Territory, and exhibits this, his bill of complaint, in his own right as an Eastern Cherokee Indian, on his own behalf as well as on behalf of such other Eastern Cherokee Indians as may

come in and be made parties complainant to this bill and contribute to the costs and expenses of this suit.

2. That the defendant, Ethan A. Hitchcock, is a citizen of the United States, and is sued as the Secretary of the Interior thereof, and the defendant, Charles H. Treat, is a citizen of the United States, and is sued as the Treasurer thereof.

3. That heretofore, to wit, on or about May 18, 1905, the Court of Claims, by its judgment or findings of that date in a cause therein depending, in which the Cherokee Nation and others were claimants and the United States and others were defendants, among other things found that the sum of $1,111,284.70, with interest thereon from the 12th day of June, A. D. 1838, to date of payment, less such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903, and such other counsel fees and expenses as may be hereafter allowed by this court under the provisions of the act of March 3, 1903, shall be paid to the Secretary of the Interior, to be by him received and held for the uses and purposes following:

First. To pay the costs and expenses incident to ascertaining and identifying the persons entitled to participate in the distribution thereof and the cost of making such distribution.

Second. The remainder to be distributed directly to the Eastern and Western Cherokee who were parties either to the treaty of New Echota, as proclaimed May 23, 1836, or the treaty of Washington, of August 6, 1846, as individuals, whether east or west of the Mississippi River, or to the legal representatives of such individuals.

And your complainant further alleges that on the 30th day of April, 1906, by its judgment the Supreme Court of the United States affirmed said findings of the Court of Claims, with the modification so as to direct the distribution of said fund to be made to the Eastern Cherokees as individuals, whether east or west of the Mississippi, parties to the treaties of 1835–36 and 1846, and exclusive of the Old Settlers.

4. And your complainant further alleges that he is an Eastern Cherokee Indian and is entitled as such to his distributive share of the fund referred to in paragraph three of this his bill of complaint.

5. Your complainant further alleges that he is informed and believes and therefore charges that the said Ethan A. Hitchcock, Secretary of the Interior of the United States, either hath drawn or is about to draw his warrant upon the Treasury of the United States for the payment of certain counsel fees alleged to be chargeable against said fund under and by virtue of said alleged and pretended contract referred to in said findings of the Court of Claims as the "Contract with the Cherokee Nation of January 16, 1903," and that the said Charles H. Treat, Treasurer of the United States, is about to honor said draft in favor of the parties named in said alleged and pretended contract of March 16, 1903, to wit, the firm of Finkleberg, Nagle & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory, all of whom are nonresidents of the District of Columbia and beyond the jurisdiction and process of this honorable court.

6. And your complainant further alleges that said pretended contract of Jany. 16, 1903, was never in truth and in fact executed by the Cherokee Nation, although your complainant is informed and believes that a contract alleged to have been executed by said Cherokee Nation with said firm of Finkleberg, Nagle & Kirby and said Edgar Smith was brought here to Washington, presented to the said defendant, Ethan A. Hitchcock, Secretary of the Interior, and by him approved, and your complainant further alleges that his information with reference to said alleged and pretended contract is that one Thomas M. Buffington, who was the principal chief of the Cherokee Nation, without authority from it to enter into said contract, and against the public vote of said nation in council assembled, undertook to sign it as the act of said Nation, and brought it on to Washington as said nation's contract, in direct violation of his instructions and without the knowledge of said Cherokee Nation. And your complainant alleges that the principal chief of the Cherokee Nation had no authority under its law to execute any contract in its name unless expressly authorized to do so at a public meeting, and that in this particular instance this alleged contract was presented to the nation in open council and was rejected by a vote of 40 against its execution to but 2 in its favor, and your complainant alleges that the said pretended contract between the said Cherokee Nation and said Finkleberg, Nagle & Kirby and Edgar Smith was an unlawful contract and did not bind the Cherokee Nation, and certainly did not bind the Eastern Cherokees, who, within the past week, in obedience to the judgment of the Court of Claims, paid about $745,000 as counsel fees for the collection of this identical claim to lawyers of their own selection, whose claim for fees they did not dispute nor desire to dispute.

7. And your complainant further alleges that the amount of the fees intended to be paid by said defendants to said Finkleberg, Nagle & Kirby and Edgar Smith is, as he is informed and believes, and therefore charges, upwards of $150,000, and that

its payment by reason of anything contained in said pretended contract would reduce the amount of his distributive share and the amount of the distributive share of each one of the Eastern Cherokee Indians by his or her proportionate share of said sum of $150,000, so about to be wrongfully and improperly paid to said Finkleberg, Nagle & Kirby and said Edgar Smith.

8. And your complainant further alleges that he is informed and believes, and therefore charges, that there are several thousand Eastern Cherokees entitled to share in the distribution of the fund now in the hands of the Secretary of the Interior for distribution, and but for the interference of this honorable court by its writ of injunction to restrain the defendants from their intended payment of said sum, it would be necessary for each one of them to bring a separate suit for the recovery of his or her share of said intended payment of $150,000.

In tender consideration of the premises and to the end that the said defendant, Ethan A. Hitchcock, Secretary of the Interior, be enjoined and strictly prohibited from drawing his draft upon the Treasurer of the United States or otherwise authorizing the Treasurer of the United States to pay any sum under said alleged contract of January 16, 1903, and enjoining and strictly prohibiting the defendant, Charles H. Treat, Treasurer of the United States, from honoring said draft or in any other way paying any sum on account of said alleged contract of January 16, 1903, and that your complainant may have such other and further relief as his case may require, may it please your honors to grant unto your complainant the writ of subpœna directed against the defendants, demanding them and each of them to be and appear in this honorable court on some certain day to be named therein to answer the premises, though not under oath, answer under oath being hereby expressly waived, and to abide by and perform such order or decree as may be therein passed, and the writ of injunction enjoining and strictly prohibiting the said defendant, Ethan A. Hitchcock, from drawing his draft or otherwise authorizing the payment of said fund, as prayed in said bill, and enjoining and strictly prohibiting the said Charles H. Treat, Treasurer as aforesaid, from honoring any such draft or in any other way paying any sum on account of said alleged contract of January 16, 1903.

And complainant will ever pray.

FRANK J. BOUDINOT,
Complainant.
CHARLES POE,
SAMUEL A. PUTNAM,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

I hereby certify that on this 18th day of July, A. D. 1906, before the subscriber, a notary public, duly commissioned and qualified, personally appeared the complainant, Frank J. Boudinot, and did solemnly swear that he hath read the bill by him subscribed, and knows the contents thereof, and that the facts therein stated upon his personal knowledge are true, and those stated upon information he believes to be true.

Witness my hand and seal notarial.

[NOTARIAL SEAL.] M. S. W. DAY, *Notary Public.*

RULE TO SHOW CAUSE.

[Filed July 18, 1906, in the supreme court of the District of Columbia.]

FRANK J. BOUDINOT, COMPLAINANT,
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, et al., defendants. } Equity, No. 26436.

Upon reading and considering the bill of complaint filed in the above styled cause, it is this 18th day of July, 1906, ordered by the court that the writs of injunction, as in said bill of complaint prayed, be granted unless cause to the contrary thereof be shown on or before the 30th day of July, A. D. 1906, provided a copy of this order be served upon the defendants on or before the 23d day of July, A. D. 1906.

ASHLEY M. GOULD, *Associate Justice.*

MARSHAL'S RETURN.

Served copy of the within rule to show cause on Ethan A. Hitchcock, Secy. of the Interior, by service on Thomas Ryan, Acting Secy., and Charles H. Treat, Treasurer of the United States, personally.

July 18, 1906.

AULICK PALMER, *Marshal.*

Affidavit of John F. Wilson in Support of Bill.

[Filed July 30, 1906.]

United States of America,
Indian Territory, Northern Judicial District, ss:

I hereby certify that on this 25th day of July, 1906, before the subscriber, a notary public, duly commissioned and qualified, personally appeared John F. Wilson, and being duly sworn, on his oath states:

That he was a member of the council branch of the national council during the regular session of the national council of 1902 and remembers that a resolution was offered authorizing the principal chief of the Cherokee Nation to employ counsel to prosecute the claim of the said nation under the Slade and Bender agreement against the Government of the United States and that said resolution was put to a vote and was rejected by the council branch of the national council.

John F. Wilson.

Subscribed and sworn to before me on this the 25th day of July, 1906.

[Notarial seal.] J. C. Dannenberg,
Notary Public.

My commission expires Jan. 29, 1910.

Affidavit of W. T. Harnage in Support of Bill.

[Filed July 30, 1906.]

United States of America,
Indian Territory, Northern Judicial District, ss:

I hereby certify that on this the 25th day of July, 1906, before the subscriber, a notary public, duly commissioned and qualified, personally appeared William T. Harnage, and being sworn, says on oath: That he was a member of the senate of the Cherokee Nation during the council of 1902 and was present when a resolution was offered in the council branch of the national council to authorize Thomas M. Buffington, then the principal chief of said nation, to make a contract of employment of counsel to prosecute the claims of said nation against the Government of the United States; heard said resolution put to a vote and rejected.

W. T. Harnage.

Subscribed and sworn to before me on this the 25th day of July, 1906.

[Notarial seal.] J. C. Dannenberg,
Notary Public.

My commission expires Jan. 29, 1910.

Affidavits Fortifying Bill of Complaint.

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity court.]

Frank J. Boudinot
against
Ethan A. Hitchcock, Secretary of the Interior, et al. } Equity, No. 26436.

The undersigned on oath state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned; that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted restraining the defendants herein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation through its principal chief, Thomas M. Buffington, with Finkleberg, Nagle & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory. We and each of us further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the selection of their claim against the United States Government for $1,111,284.70, with interest, were John Waile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

BEN JOHNSON, Tahlequah, I. T.
WALTER R. GOURD, Moodys, I. T.
WILSON (his x mark) HORNET, Moodys, I. T.

Witness to mark:
JOHN SHAY.
R. B. BEAN.

JAMES (his x mark) SMITH, Moodys, I. T.

Witness to mark: BEN JOHNSON.
Attest: R. B. BEAN.

STEVE VANN, Moodys, I. T.
J. B. SMITH, Moodys, I. T.
J. J. HICKS, Moodys, I. T.
NELSON HICKS, Moodys, I. T.
JEFF HICK.
PAUL GLASS.
ADAM SWIMMER.
DICK (his x mark) AGENT.

Witness to mark:
PAUL GLASS.
J. J. HICKS.

R. B. BEAN, Tahlequah.
JESSE R. GOURD, Moody, I. T.
GRANT (his x mark) SMOKE, Moody, I. T.

Witness to mark:
PAUL GLASS.
BEN JOHNSON.

WM. SMITH, Moody, I. T.
ISAAC (his x mark) TUCKER.

Witness to mark:
PAUL GLASS.
ADAM SWIMMER.

JOHNSON MANNING.
JOHN W. SHARP.
RICHARD M. WOLFE.
JACK DEW.
NED DREADFULWATER.
LUKE BLUE BIRD.
TOM SMITH.

UNITED STATES OF AMERICA,
Northern District, Indian Territory.

The foregoing twenty-four named persons, Cherokee Indians by blood, citizens of the Cherokee Nation, and members of the Eastern Cherokees, to me personally well known to be such, subscribed and sworn to the foregoing instrument before me, Robert B. Bean, a notary public within and for the northern judicial district, Indian Territory, duly commissioned and acting as such at Tahlequah, Indian Territory, this 26th day of July, A. D. 1906.

[Notarial seal.]

ROBERT B. BEAN,
Notary Public.

My commission expires May 13th, 1910.

[Filed July 30, 1906.]

WASHINGTON, D. C., *July 20, 1906.*

DEAR SIR: Edgar Smith and his associates are claiming $150,000 Eastern Cherokee money on account of the contract Buffington made in January, 1903. The Eastern Cherokees have paid $745,000 under the Vaile contract, which was to be in full payment of all services and expenses of whatever kind or character performed and incurred in the collection of the Eastern Cherokee money. As you know, Smith et al. pretended to represent the Cherokee Nation under that contract and opposed the Eastern Cherokees all along the line all the time.

I have commenced a suit to enjoin the Secretary and the U. S. Treasurer from paying this claim out of our money. The case is set for July 30th.

Enclosed with this letter you will find a blank form of affidavit. I urge upon you to get as many signatures to this paper as possible and return it to me so that it will be sure to reach me by the 29th of this month. The signatures must be secured before a notary public, of course. In transmitting the signed paper I wish you would write me a letter to accompany it.

Very truly, your friend, FRANK J. BOUDINOT.

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity court.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL. } Equity, No. 25436.

The undersigned on oath state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned, that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted, restraining the defendants herein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation through its principal chief, Thomas M. Buffington, with Finkleberg, Nagle & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory. We and each of us further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the collection of their claim against the United States Government for $1,111,284.70, with interest, were John Vaile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

JOHN MUSKRAT.
DAVID (his x mark) MUSKRAT.

Witness to mark:
J. F. MASON.
L. M. ALEXANDER.

Subscribed and sworn to before me this the 24 day of July, 1906.

R. Y. NANCE, [SEAL.]
Notary Public.

My commission expires May 22, 1910.

DAVID (his x mark) MUSKRAT.
WILLIAM (his x mark) HAMANSTRIKER.
JESSE (his x mark) DUCK.
JACKSON (his x mark) DEW.
YOSE (his x mark) DUCK.
JOHN (his x mark) FOGG.
JOHN MUSKRAT.

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity court.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL. } Equity, No. 26436.

The undersigned on oath state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned; that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted restraining the defendants herein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation through its principal chief, Thomas M. Buffintgon, with Finkleberg, Nagle & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian

Territory. We and each of us further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the collection of their claim against the United States Government for $1,111,284.70, with interest, were John Vaile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

1. Lewis R. Nash.
2. Ida V. Nash.
3. Mrs. Mary J. Ross.
4. W. D. Ross.
5. Hubbard Ross.
6. Percy Hicks.
7. John Vickery.
8. Walter Scott.
9. John Runnels.
10. Reddy A. Reese.
11. Martin Miller.
12. Jack Walker.
13. Henry C. Meigs.
14. Jno. Stranes.
15. C. L. Washhound.
16. Mrs. Eliza Andre.
17. Mrs. F. R. Kneeland.
18. Mrs. Allie R. Howard.
19. Miss Belle Ross.
20. Will Vance.
21. John Vance.
22. Ida Vance.
23. Mortar Vance.
24. R. E. Butler.
25. Alice Ditter.
26. Mrs. Belle Brown.
27. Mary Ann Perkins.

Subscribed and sworn to before me this 24th day July, 1906.

[Notarial seal.] Henry Eiffert, *Notary Public.*

My com. expires Oct. 16th, 1907.

United States of America,
Indian Territory, western judicial district, ss:

Be it remembered, that on this day came before me, the undersigned, a notary public within and for the western judicial district of the Indian Territory aforesaid, duly commissioned and acting as such, the above-named persons and signed the above affidavit in my presence and stated that they understood the nature, contents, and effect thereof and approved of the same; that they are personally well known to me, that I know of my own knowledge that they are reputable persons and entitled to full faith and credit, and I do so certify.

Witness my hand seal as such notary public, on this 24th day of July, 1906.

[notarial seal.] Henry Eiffert, *Notary Public.*

My commission expires October 16th, 1907.

[Filed July 30, 1906.]

Washington, D. C., *July 20, 1906.*

Dear Sir: Edgar Smith and his associates are claiming $150,000 Eastern Cherokee money on account of the contract Buffington made in January, 1903. The Eastern Cherokees have paid $745,000 under the Vaile contract, which was to be full payment of all services and expenses of whatever kind or character performed and incurred in the collection of the Eastern Cherokee money. As you know, Smith et al, pretended to represent the Cherokee Nation under that contract, and opposed the Eastern Cherokees all along the line all the time.

I have commenced a suit to enjoin the Secretary and the U. S. Treasurer from paying this claim out of our money. The case is set for July 30th.

Enclosed with this letter you will find a blank form of affidavit; I urge upon you to get as many signatures to this paper as possible, and return it to me so that it will be sure to reach me by the 29th of this month. The signatures must be secured before a notary public of course. In transmitting the signed paper, I wish you would write me a letter to accompany it.

Very truly, your friend,

FRANK J. BOUDINOT.

[In the supreme court of the District of Columbia, holding an equity court.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL. } Equity, No. 26436.

The undersigned on oath state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned; that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted restraining the defendants herein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation through its principal chief, Thomas M. Buffington, with Finkleberg, Nagle & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory. We and each of us further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the collection of their claim against the United States Government for $1,111,284.70 with interest, were John Vaile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

1. THOMAS W. FOREMAN, Tahlequah, I. T.
2. CHEROKEE FOREMAN, Tahlequah, I. T.
3. THOMAS (his x mark) WHITE, Stilwell, I. T.

Attest x mark:
W. H. PARKISON.
JACK WAFFORD.

4. JACK WAFFORD, Moody, I. T.
5. SAMUEL MANUR, Tahlequah, I. T.
6. WILLIAM H. BALENTINE, Sr., Tahlequah, I. T.
7. TOM FINLEY, Tahlequah, I. T.
8. ANDY NAVE, Tahlequah, I. T.
9. JOHNSON RORRIS, Jr., Tahlequah, I. T.
10. ARCH SPEARS, Tahlequah, I. T.
11. WILLIAM T. HARNAGE, Tahlequah, I. T.
12. WILLIAM P. BECK, Tahlequah, I. T.
13. J. HENRY COVEL, Tahlequah, I. T.
14. RIDGE PASCHAL, Tahlequah, I. T.
15. GEORGE SMITH, Tahlequah, I. T.
16. DENNIS B. MCNAIR, Tahlequah, I. T.
17. JOHN R. PRICE, Tahlequah, I. T.
18. NED GRITTS, Tahlequah, I. T.
19. NED MCNAIR, Tahlequah, I. T.
20. THOMAS F. MORRIS, Tahlequah, I. T.
21. J. BUTLER BUSBYHED, Tahlequah, I. T.

UNITED STATES OF AMERICA,
Indian Territory, Northern District, ss:

The foregoing twenty-one (21) named persons, Cherokee Indians by blood, citizens of the Cherokee Indian Nation, to me personally well known as such and as Eastern Cherokees, subscribed and sworn to the foregoing instrument before me, William F. Rasmus, a notary public within and for this judicial district and Territory aforenamed, duly commissioned and acting as such, at Tahlequah, Ind. Terry., this the 25th day of July, A.D. 1906.

[NOTARIAL SEAL.]

WM. F. RASMUS,
Notary Public.

(My commission expires April 12th, A.D. 1909 (4th term).)

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity court.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF the Interior, et al. } Equity, No. 26436.

The undersigned, on oath, state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned; that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted restraining the defendants therein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation through its principal chief, Thomas M. Buffington, with Finkleberg, Nagle & Kirby, of St. Louis, Missouri, and Edgar Smith, of Vinita, Indian Territory.

We, and each of us, further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the collection of their claim against the United States Government for $1,111,284.70, with interest, were John Vaile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

DANIEL TUCKER.
SAM (his x mark) BREAD.

Witness to mark:
W. W. ROSS.
A. D. MOTHERSHEAD.

Subscribed and sworn to before me this 24th day of July, 1906.

[NOTARIAL SEAL.] R. C. BREWER, *Notary Public.*

My commission expires Oct. 14, 1907.

P. H. HOLLAND.
JOS. R. SEQUICHIE,
Member of Council.
WILLIAM W. ROSS,
Member of Emigrant Council of Cherokees.
HOWARD ROBERTS.
W. H. ROGERS.
CHARLES BUFFINGTON,

Subscribed and sworn to before me this 25 day of July, 1906.
My com. expires May 7, 1910.
[NOTARIAL SEAL.] HOWARD ROBERTS, *N. P.*

[The Ochelata Grist Mill. Highest prices for wheat, corn, oats, and kaffir corn. John C. Duncan, proprietor.]

OCHELATA, IND. TER., *July 25th, 1906.*

Mr. FRANK J. BOUDINOT,
Washington, D. C.:

Herewith I hand you affidavit which explains itself. I regret very much to say that this matter came to my notice too late to do any more and get it to you in time to be made a part of your proceedings.

Do you not think it prudent to, if possible, postpone this case a week of two and give me time to take a few of such affidavits from some of the other Eastern Cherokees? If you can do so, I can furnish you all you need, anywhere from 500 to 5,000 of them.

It strikes us all here as an absurdity to think that as smart men as Edgar Smith and his associate members of that firm would attempt to claim a fee out of the $1,111,284.70 claim. It is possible, however, that if Mr. Buffington was recognized at all as capable of contracting that Smith et al. might claim a fee out of the other three items mentioned in the Slade-Bender award, which would probably amount to one-half of the amount of their fee. Those items, if you remember their status, rightfully belong to the Cherokee Nation and not the Eastern Cherokees. It seems to be a hard matter for our Govern-

ment officials to distinguish the difference between the Eastern or Emigrant Cherokees and the Cherokee Nation. It is possible that the Eastern Cherokees can be a part of the Cherokee Nation, but it is impossible for the Cherokee Nation to be Eastern Cherokees in the sense that the Government construes them, because the Cherokee Nation is composed of two or even three distinct classes of Cherokees, viz, the Old Settlers or Western Cherokees, the Eastern or Emigrant Cherokees, and others (if I remember right) who were known as the "treaty party."

Mr. Buffington might represent these people in a collective way and yet have no right whatever to represent them as individuals without a special authority, which he did not have.

The Eastern or Emigrant Cherokees have a regularly organized council to represent them, and that body passed resolutions authorizing you, their regularly commissioned attorney, to file a protest against any and all acts of Mr. Buffington in the collection of the $1,111,284.70 claim.

I think, too, that the records of the hon. Sec'y of Interior will show a protest filed by telegram immediately after the letting of the contract by Mr. Buffington to Smith et al.

All of these are proofs of Mr. Buffington not being recognized as having such authority as he assumed, and that Smith and his associates were not recognized as the attorneys. And during the whole fight I have never seen a scratch of a pen from Smith et al. on the Eastern Cherokee claim. Furthermore, I have been directly interested in reading up the proceeding of the whole case and have never known any other attorneys in the case except R. L. Owen and his associates, whose work has proved entirely satisfactory. I regret to state that my wife is in bed sick at present, which renders me utterly unable to get out to do any active work for the advancement of this case, but if you can get a continuance I can do you lots of good. Everyone whom I have seen is in direct accord with you and join me in a hearty approval of your honest efforts.

Respectfully,

JOHN C. DUNCAN.

[In the supreme court of the District of Columbia, holding an equity court.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL. } Equity, No. 26436.

The undersigned on oath state that they are and each of them is an Eastern Cherokee and entitled as such to share in the distribution of the fund in these proceedings mentioned; that they are desirous that the writ of injunction in the bill of complaint herein prayed for shall be granted, restraining the defendants therein from paying any money out of said fund on account of the pretended contract alleged to have been made by the Cherokee Nation, through its principal chief, Thomas M. Buffington, with Finkleberg, Nagle & Kirby, of St. Louis, Missouri, and Edgar Smith, of Vinita, Indian Territory.

We and each of us further swear that the only counsel employed and contracted with by the Eastern Cherokees in the matter of the collection of their claim against the United States Government for $1,111,284.70, with interest, were John Vaile, Robert L. Owen, and their assistants and associates, all of whom have been fully paid therefor, as directed by the judgment of the Court of Claims.

Affiants further say that they are in full accord and harmony with the complainant herein in his effort by this bill to restrain the defendants, the Secretary of the Interior and the Treasurer of the United States, from the payment of any money under said pretended contract.

JOHN C. DUNCAN.
JOSEPH S. BEAN.

Subscribed and sworn to before me this 25th day of July, 1906.

[Notarial seal.] JOHN D. WAKELY, *Notary Public.*

My commission expires April 6, 1908.

AFFIDAVIT OF C. J. HARRIS IN SUPPORT OF BILL.

[Filed July 30, 1906.]

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

I hereby certify that on this the 26th day of July, 1906, before the subscriber, a notary public duly commissioned and qualified, personally appeared C. J. Harris, ex-principal chief of the Cherokee Nation, at present assistant executive secretary, and being duly sworn, on his oath states:

That he is at present assistant executive secretary of the Cherokee Nation; that he has made diligent search among the papers, records, and books of the executive office of the Cherokee Nation for the purpose of finding any act or resolution of the national council of said nation authorizing and empowering the principal chief of said nation, at that time Thomas M. Buffington, to enter into a contract of employment of any lawyers to prosecute the claim of the Cherokee Nation, known as the Slade & Bender agreement, against the Government of the United States, and has been unable to find any such papers, records, or books; that he has made diligent search for the journal of the council branch of the national council, which is a record of the proceeding of said council branch, and that he has been unable to find said journal.

C. J. HARRIS,
Assistant Executive Secretary of the Cherokee Nation.

Subscribed and sworn to before me this the 26th day of July, 1906.

[NOTARIAL SEAL.] J. C. DANNENBERG, *Notary Public.*

My commission expires Jan. 29th, 1910.

SEPARATE ANSWER OF DEFENDANT ETHAN A. HITCHCOCK TO BILL.

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity term, the —— day of July, A. D. 1906.]

FRANK J. BOUDINOT, COMPLAINANT, *vs.* ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR of the United States, and CHARLES H. TREAT, TREASURER OF THE UNITED States.	In Equity, Docket No. 58. Case No. 26436.]

I, Ethan A. Hitchcock, one of the defendants above named, by protestation, not confessing or acknowledging all or any part of the matters or things in complainant's said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, for answer to so much thereof as this defendant is advised is right and proper to be answered, and by way of return to the rule to show cause entered herein on the 18th day of July, 1906, respectfully states as follows:

1. Upon information and belief and for the purposes of this case solely this defendant admits that the complainant is an Eastern Cherokee Indian and a resident of the Indian Territory, but denies that he is a citizen of the United States. This defendant has no knowledge as to the right or authority of said complainant to bring or maintain his said suit in a representative capacity, but upon advice of counsel suggests to this honorable court that because of the matters and facts hereinafter set forth said complainant ought not to be permitted to maintain his said action in this court either in a representative capacity or otherwise.

2. This defendant admits that he is a citizen of the United States and at the present time is filling the office of Secretary of the Interior thereof; also that the defendant, Charles H. Treat, is a citizen of the United States and at the present time is filling the office of Treasurer of the United States.

3. This defendant admits that on or about May 18th, 1905, the United States Court of Claims, in certain causes in said court depending, wherein among others the Cherokee Nation was a claimant and the United States was defendant, rendered a judgment in favor of the Cherokee Nation and against the United States substantially in the terms and form in said bill of complaint set forth, and also admits that on or about the 30th day of April, A. D. 1906, the Supreme Court of the United States,

with but a slight modification, affirmed said judgment of said Court of Claims, but for greater precision and certainty defendant annexes true copies of both of said judgments hereto, marked, respectively, "Exhibit A" and "Exhibit B," and prays that the same may be considered and taken as and to be a part of this answer as though the same had been set forth at length in the body hereof.

This defendant is unable either to admit or deny that said complainant is entitled to any distributive share of so much of the fund referred to in paragraph 3 of said bill of complaint as by said judgment of said Court of Claims, modified by the judgment of the Supreme Court of the United States, is ordered to be paid to the Secretary of the Interior for distribution to the Eastern Cherokee Indians as individuals, whether residing east or west of the Mississippi River, who were parties to the treaties of 1835–36 and 1846, the persons entitled to participate in such distribution not having been officially ascertained and identified, but this defendant especially calls attention to the fact that the fund so distributable is, as set forth in said bill of complaint, the total amount of $1,111,284.70, with interest thereon from the 12th day of June, A. D. 1838, as provided by said judgment and the laws of the United States applicable thereto, amounting in the whole to the sum of $4,937,036.10, "less such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903," which said contract is more specifically referred to and described in paragraphs 5 and 6 of complainant's said bill of complaint, the amount of such counsel fees being estimated at $147,527.01.

5. This defendant denies that he is about to draw his warrant upon the Treasury of the United States for the payment of any of the counsel fees referred to in the paragraph next above or in said bill of complaint, and particularly denies that he is about to draw his warrant upon the Treasury of the United States for the payment of any fees alleged or claimed to be chargeable against said fund or any thereof under and by virtue of the contract which is referred to in the findings and judgment of said Court of Claims as the "contract with the Cherokee Nation of January 16, 1903," to which said contract the firm of Finkelnburg, Nagle & Kirby, of St. Louis, Missouri, and Edgar Smith, of Vinita, Indian Territory, are parties of the second and third parts, respectively; but if it were otherwise this defendant is informed by counsel, and therefore avers that said firm of Finkelnburg, Nagle & Kirby, or the individuals composing the same, and said Edgar Smith are and would be indispensable parties to any proceedings which would have the effect of enjoining the execution of said judgments of the Court of Claims and of the Supreme Court of the United States, or the performance on the part of the United States and the Cherokee Nation of the duties and obligations imposed upon said Cherokee Nation by the terms of the contract aforesaid.

6. This defendant denies the allegations of said bill of complaint to the effect that said contract of January 16, 1903, was not executed by the Cherokee Nation; and denies that Thomas M. Buffington, as principal chief of the Cherokee Nation, was without authority from said nation to enter into said contract, and further denies that said Buffington brought said contract to Washington in violation of his instructions and without the knowledge of said Cherokee Nation, and this defendant further denies that the action of said Buffington in connection with said contract was against the laws of the Cherokee Nation, and further denies that said contract was presented to said nation in open council and rejected as in said bill of complaint alleged; and this defendant, on the advice of counsel further answering, says that if the facts were otherwise and were as stated in said bill of complaint they would be immaterial and without purpose or bearing in this case for the reasons here set forth, viz:

The Congress of the United States in the exercise of its lawful prerogatives enacted on or about July 1st, 1902, a certain act entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites, and for other purposes," which said act is printed in full in volume 32, Statutes at Large, at page 716 et seq.

By section one (1) of said act it was declared that the words "nation" and "tribe" as used therein should each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.

By section sixty-eight (68) of said act jurisdiction was conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States "any claim which the Cherokee tribe or any band thereof, arising under treaty stipulations, may have against the United States," and it was also provided thereby that the institution and prosecution of any such suit on the part of the tribe should "be through attorneys employed and to be compensated in the manner prescribed in sections 2103 to 2106, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys."

Section 74 of said act declared that said act should not "take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation" in the manner prescribed in section 75 thereof.

Said act of July 1, 1902, was subsequently duly ratified by a majority of the votes cast by legal voters of the Cherokee Nation as prescribed by said section 75 thereof at a popular election held August 7, 1902, and such ratification was duly certified to the President of the United States as required thereby.

Thereafter, on January 16, 1903, pursuant to the provisions of said section 68 of said act of Congress, and in strict compliance with the manner and requirements set forth and prescribed in sections 2103, 2104, 2105, and 2106 of the Revised Statutes of the United States, a contract was entered into at the city of Washington by and between the Cherokee Nation, acting through its principal chief, Thomas M. Buffington, and the firm of Finkelburg, Nagel & Kirby and Edgar Smith, which said contract was on said date duly approved by the Honorable William A. Jones, Commissioner of Indian Affairs, and this defendant, acting in his capacity of Secretary of the Interior, as will more fully appear from an inspection of the copy of said contract and the endorsements thereon hereto annexed, marked "Exhibit C," and prayed to be taken as a part hereof as though set forth at large herein.

Under the requirements and provisions of section 2104 of the Revised Statutes of the United States the Honorable Thomas Ryan, Acting Secretary of the Interior, and the Honorable Charles F. Larrabee, Acting Commissioner of Indian Affairs, on July 17, 1906, certified to the proper accounting officers that said contract had been fully complied with and fulfilled on the part of said Finkelnberg, Nagel & Kirby and Edgar Smith.

By the terms of said contract, as will more fully appear from an inspection thereof, it was agreed and provided that for and in consideration of the services to be rendered by said firm of Finkelnberg, Nagel & Kirby and Edgar Smith they should receive a fee or compensation calculated and limited only as follows, viz:

"Five per centum upon the first million dollars or part thereof collected, and two and one-half per centum upon the amount collected over and above the said first million dollars:" the disposition to be made of the money when collected under said contract to be as provided in section 66 of said act of Congress of July 1, 1902.

Thereafter, on March 3, 1903, there was duly approved another act of Congress, entitled "An act making appropriations for the current and contingent expenses of the Indian department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes" (32 Stats., 996), by one paragraph or section whereof it was provided that said section sixty-eight (68) of the act of July 1, 1902, aforesaid should be so constructed as to give the Eastern Cherokees, so-called, including those in the Cherokee Nation and those who remained east of the Mississippi River, acting together or as two bodies, the status of a band or bands, as the case may be, for all the purposes of said section; and further provided that both the Cherokee Nation and said Eastern Cherokees, so-called, should be made parties to any suit against the United States under said section sixty-eight (68); and further declared that, subject to the right of appeal granted in and by said section, the Court of Claims should render its judgment in favor of the rightful claimant and should also determine to whom the proceeds of such judgment equitably belonged in whole or in part, and also whether, for the purpose of participating in said claim, the Cherokee Indians who remained east of the Mississippi River constituted a part of the Cherokee Nation or of the Eastern Cherokees, so-called.

In suits instituted in the Court of Claims by petitions duly filed by and on behalf of the Cherokee Nation and by and on behalf of all the Eastern Cherokees, both west and east of the Mississippi River, and by and on behalf of certain Eastern Cherokees living east of the Mississippi River, which said suits were numbered, respectively, 23199, 23212, and 23214, and were consolidated by said court, after hearing a judgment was entered in said consolidated causes in favor of the plaintiff, The Cherokee Nation, and against the United States for, among others, the above-mentioned item of $1,111,284.70, with interest thereon at the rate of five (5) per cent from June 12, 1838, to date of payment, amounting to the sum of $3,825,751.40, or in the aggregate of both principal and interest to the sum of $4,937,036.10, as above stated, but in accordance with the provisions of said act of March 3, 1903, above mentioned, it was further provided in and by said judgment that the proceeds of said item, both principal and interest, "less such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903," being the contract aforesaid between the Cherokee Nation acting by its principal chief, Thomas M. Buffington, and the firm of Finkelburg, Nagel & Kirby and Edgar Smith, and less "such other counsel fees and expenses" as might thereafter be allowed

by said court under the provisions of said act of March 3, 1903, should be paid to the Secretary of the Interior to be by him received and distributed in accordance with the further provisions of said judgment to the individuals thereby adjudged to be entitled to receive it. This said judgment of the Court of Claims, on an appeal taken to the Supreme Court of the United States in each and every respect material here, was affirmed by said Supreme Court, as will more fully appear by and from an inspection of said judgments respectively, copies whereof are annexed hereto, as aforesaid.

Further answering paragraph six (6) of said bill of complaint this respondent submits that the contract in question was a lawful contract, binding in all respects upon the Cherokee Nation, and also binding upon individuals, Eastern Cherokees, or others who claim any rights or benefits under or by virtue of said judgment of the Court of Claims in favor of the Cherokee Nation.

7. This defendant admits that the amount of the fee accruing to the firm of Finkelburg, Nagel & Kirby and Edgar Smith jointly under said contract of January 16, 1903, on account of the item and interest thereon here involved is estimated at $147,527.01, but denies that the payment thereof to the parties entitled to receive the same will in any wise reduce the distributive share of said complainant under the terms of said judgment of the Court of Claims or under the terms of the act of Congress of June 30, 1906, making an appropriation to pay the same for the reason that by the terms of said judgment and of said act of Congress making an appropriation to pay the same the distributive share of said complainant and of all others who stand in like position with him is a proportionate share of the total amount recovered on account of said item of $1,111,284.70, with interest, less the said sum of $147,527.01 chargeable against the same under the provisions of the contract aforesaid with the Cherokee Nation, and such other counsel fees and expenses as may have been allowed by said Court of Claims under the provisions of the act of Congress of March 3, 1903, above mentioned.

But were the matter otherwise this defendant for further answer says that said Eastern Cherokees entitled to participate in the distribution of the proceeds of said judgment will, according to best estimates, number about thirty to forty thousand and the share of any one of them in said sum of $147,527.01 would not in any event exceed the sum of five (5) dollars, wherefore this defendant submits that this honorable court is without jurisdiction to entertain any suit either to recover the respective shares of any of such individuals or to restrain or enjoin the payment over of the same in accordance with the terms of the judgments of the Supreme Court of the United States and of the Court of Claims, and of the act of Congress making appropriation to pay the same.

Wherefore, having thus fully answered the complainants' bill of complaint, this defendant respectfully prays that the rule to show cause passed herein on the 18th day of July, A. D. 1906, may be discharged, and this defendant may be dismissed with his reasonable costs in this behalf expended.

E. A. HITCHCOCK,
By THOS. RYAN,
Acting Secretary of Dept. of Interior.

DANIEL W. BAKER,
U. S. Atty. for defts.

District of Columbia, ss:

I, Thomas Ryan, being first duly sworn, do say that I am Acting Secretary of the Interior Department and as such am familiar with the general course of business and conduct of affairs therein; I have read over the foregoing and annexed answer of Ethan A. Hitchcock and know the contents thereof and the matters of fact therein stated, are true to the best of my knowledge, information, and belief.

THOS. RYAN.

Subscribed and sworn to before me this 30th day of July, A. D. 1906.

[NOTARIAL SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

EXHIBIT A.

[Filed July 30, 1906.]

[House Document No. 813, Fifty-ninth Congress, first session.]

LETTER FROM THE SECRETARY OF THE TREASURY TRANSMITTING RECORD OF CERTAIN JUDGMENTS RENDERED BY THE COURT OF CLAIMS AGAINST THE UNITED STATES.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 17, 1906.

SIR: I have the honor to transmit herewith for the consideration of Congress, the record of a judgment rendered by the Court of Claims on May 18, 1905, in consolidated causes No. 23199, The Cherokee Nation *v.* The United States; No. 23214, The Eastern Cherokees *v.* The United States; and No. 23212, The Eastern and Emigrant Cherokees *v.* The United States, aggregating a principal sum of $1,134,248.23, therein set forth, with interest upon the several items of judgement at 5 per cent from the several dates named therein to date of payment, as provided in the decree.

An appropriation for the judgment is necessary before payment can be made.

A copy of the judgment as transmitted to this Department by the Court of Claimss December 29, 1905, and copy of the mandate of the Supreme Court of the United State, dated May 14, 1906, as certified by the Court of Claims, May 16, 1906, accompany this communication.

Jurisdiction was conferred upon the Court of Claims in this case by section 68 of the act of Congress of July 1, 1902 (32 Stat. L., 726), and amendment thereof in section 1 of the act of March 3, 1903 (32 Stat. L., 996).

Respectfully,

L. M. SHAW, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

COURT OF CLAIMS,
Washington, D. C., December 29, 1905.

SIR: By order of the court I transmit herewith inclosed an attested transcript of the judgment rendered in the above-entitled cases on the 18th day of May, 1905, with the request that the same may be filed in your Department.

Very respectfully,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. LESLIE M. SHAW,
Secretary of Treasury, City.

In the Court of Claims.

THE CHEROKEE NATION *v.* THE UNITED STATES.	No. 23199.	Consolidated.
THE EASTERN CHEROKEES *v.* THE UNITED STATES.	No. 23214.	
THE EASTERN AND EMIGRANT CHEROKEES *v.* THE UNITED STATES.	No. 23212.	

At a Court of Claims, held in the city of Washington, District of Columbia, May 18, A. D. 1905, judgment was ordered to be entered in the above consolidated cases as follows:

The above causes, on motion and by consent of the parties, having heretofore been consolidated for purposes both of hearing and judgment by appropriate order of this court, came on to be heard upon the pleadings, orders, and proofs, and were argued by Messrs. Charles Nagel, Edgar Smith, and Frederic D. McKenney, on behalf of the Cherokee Nation; Messrs. Robert L. Owen and William H. Robeson, on behalf of the Eastern Cherokees; Mrs. Belva A. Lockwood, on behalf of certain individual claimants, styled Eastern and Emigrant Cherokees, and Mr. Assistant Attorney-General Pradt, on behalf of the United States; and the court being not sufficiently advised in the

premises, it is, this 18th day of May, A. D. 1905, adjudged, ordered, and decreed that the plaintiff, the Cherokee Nation, do have and recover of and from the United States as follows:

Item 1. The sum of	$2,125.00
With interest thereon at the rate of 5 per cent from February 27, 1819, to date of payment.	
Item 2. The sum of	1,111,284.70
With interest thereon at the rate of 5 per cent from June 12, 1838, to date of payment.	
Item 3. The sum of	432.28
With interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment.	
Item 4. The sum of	20,406.25
With interest thereon from July 1, 1903, to date of payment.	

The proceeds of said several items, however, to be paid and distributed as follows:

The sum of two thousand one hundred and twenty-five dollars ($2,125) with interest thereon at the rate of 5 per cent from February 27, 1819, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation to be paid as counsel fees, shall be paid to the Secretary of the Interior in trust for the Cherokee Nation, and shall be credited on the proper books of account to the principal of the "Cherokee school fund" now in the possession of the United States and held by them as trustees.

The sum of four hundred and thirty-two dollars and twenty-eight cents ($432.28), with interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation to be paid as counsel fees, shall be paid to the Cherokee Nation to be received and receipted for by the treasurer or other proper agent of said nation entitled to receive it.

The sum of twenty thousand four hundred and six dollars and twenty-five cents ($20,406.25), with interest thereon at the rate of 5 per cent per annum from July 1, 1893, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation to be paid as counsel fees, shall be paid to the Secretary of the Interior and credited on the proper books of account to the principal of the "Cherokee national fund," now in the possession of the United States and held by them as trustees.

The sum of one million one hundred and eleven thousand two hundred and eighty-four dollars and seventy cents ($1,111,284.70), with interest thereon from June 12, 1838, to date of payment, less such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903, and such other counsel fees and expenses as may be hereafter allowed by this court under the provisions of the act of March 3, 1903 (32 Stat. L., 996), shall be paid to the Secretary of the Interior, to be by him received and held for the uses and purposes following:

First. To pay the costs and expenses incident to ascertaining and identifying the persons entitled to participate in the distribution thereof and the costs of making such distribution.

Second. The remainder to be distributed directly to the Eastern and Western Cherokees, who were parties either to the treaty of New Echota, as proclaimed May 23, 1836, or the treaty of Washington of August 6, 1846, as individuals, whether east or west of the Mississippi River, or to the legal representatives of such individuals.

So much of any of the above-mentioned items or amounts as the Cherokee Nation shall have contracted to pay as counsel fees under and in accordance with the provisions of sections 2103 and 2106, both inclusive, of the Revised Statutes of the United States, and so much of the amount shown in item numbered two (2) as this court hereafter by appropriate order or decree shall allow for counsel fees and expenses under the provisions of the act of March 3, 1903, above referred to, shall be paid by the Secretary of the Treasury to the persons entitled to receive the same upon the making of an appropriation by Congress to pay this judgment.

The allowance of fees and expenses by this court under said act of March 3, 1903, is reserved until the coming in of the mandate of the Supreme Court of the United States.

BY THE COURT.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-ninth day of December, A. D. 1905.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Attest:
C. C. NOTT, *Chief Justice.*

EXHIBIT B.

[Filed July 30, 1906.]

Court of Claims.

THE CHEROKEE NATION v. THE UNITED STATES.	No. 23199.	Consolidated.
THE EASTERN CHEROKEES v. THE UNITED STATES AND THE CHEROKEE NATION.	No. 23214.	
THE EASTERN EMIGRANT CHEROKEES v. THE UNITED STATES.	No. 23212.	

I, John Randolph, assistant clerk Court of Claims, hereby certify that the annexed is a true copy of the mandate of the Supreme Court of the United States, filed in said Court of Claims, May 15, 1906.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City, this 16th day of May, A. D. 1906.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Court of Claims, greeting:

Whereas, lately in the Court of Claims, before you or some of you, in causes between The Cherokee Nation and The United States, No. 23199; The Eastern Cherokees and The United States and the Cherokee Nation, No. 23214; and The Eastern and Emigrant Cherokees and The United States, No. 23212, wherein the decree of the said Court of Claims entered in said causes on the 18th day of May, A. D. 1905, is in the following words, viz:

"The above causes, on motion and by consent of the parties, having heretofore been consolidated for purposes both of hearing and judgment by appropriate order of this court, came on to be heard upon the pleadings, orders, and proofs, and were argued by Messrs. Charles Nagel, Edgar Smith, and Frederick D. McKenney on behalf of the Cherokee Nation; Messrs. Robert L. Owen and William H. Robeson on behalf of the Eastern Cherokees; Mrs. Belva A. Lockwood on behalf of certain individual claimants styled Eastern and Emigrant Cherokees, and Mr. Assistant Attorney-General Pradt on behalf of the United States; and the court being now sufficiently advised in the premises, it is, this 18th day of May, A. D. 1905, adjudged, ordered, and decreed that the plaintiff, the Cherokee Nation, do have and recover of and from the United States as follows:

Item 1. The sum of	$2,125.00
With interest thereon at the rate of 5 per cent from February 27, 1819, to date of payment.	
Item 2. The sum of	1,111,284.70
With interest thereon at the rate of 5 per cent from June 12, 1838, to date of payment.	
Item 3. The sum of	432.28
With interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment.	
Item 4. The sum of	20,406.25
With interest thereon from July 1, 1903, to date of payment.	

"The proceeds of said several items, however, to be paid and distributed as follows:

"The sum of $2,125, with interest thereon at the rate of 5 per cent from February 27, 1819, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation to be paid as counsel fees, shall be paid to the Secretary of the Interior in trust for the Cherokee Nation, and shall be credited on the proper books of account to the principal of the 'Cherokee school fund,' now in the possession of the United States and held by them as trustees.

"The sum of $432.28, with interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation

to be paid as counsel fees, shall pe paid to the Cherokee Nation, to be received and receipted for by the treasurer or other proper agent of said nation entitled to receive it.

"The sum of $20,406.25, with interest thereon at the rate of 5 per cent per annum from July 1, 1893, to date of payment, less 5 per cent thereof contracted by the Cherokee Nation to be paid as counsel fees, shall be paid to the Secretary of the Interior and credited on the proper books of account to the principal of the 'Cherokee national fund,' now in the possession of the United States and held by them as trustees.

"The sum of $1,111,284.70, with interest thereon from June 12, 1838, to date of payment, less such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903, and such other counsel fees and expenses as may be hereafter allowed by this court under the provisions of the act of March 3, 1903 (32 Stat., 996), shall be paid to the Secretary of the Interior, to be by him received and held for the uses and purposes following:

"First. To pay the cost and expenses incident to ascertaining and identifying the persons entitled to participate in the distribution thereof and the costs of making such distribution.

"Second. The remainder to be distributed directly to the Eastern and Western Cherokees, who were parties either to the treaty of New Echota, as proclaimed May 23, 1836, or the treaty of Washington of August 6, 1846, as individuals, whether east or west of the Mississippi River, or to the legal representatives of such individuals.

"So much of any of the above-mentioned items or amounts as the Cherokee Nation shall have contracted to pay as counsel fees under and in accordance with the provisions of sections 2103 and 2106, both inclusive, of the Revised Statutes of the United States, and so much of the amount shown in item numbered two (2) as this court hereafter by appropriate order or decree shall allow for counsel fees and expenses under the provisions of the act of March 3, 1903, above referred to, shall be paid by the Secretary of the Treasury to the persons entitled to receive the same, upon the making of an appropriation by Congress to pay this judgment.

"The allowance of fees and expenses by this court under said act of March 3, 1903, is reserved until the coming in of the mandate of the Supreme Court of the United States.

"By the Court."

as by the inspection of the transcript of the record of the said Court of Claims, which was brought into the Supreme Court of the United States by virtue of separate appeals taken by the United States, the Eastern Cherokees, and the Cherokee Nation, respectively, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and five, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on separate appeals, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this court that the second subdivision of the fourth paragraph of the decree of the said Court of Claims in this cause be modified so as to direct the distribution to be made to the Eastern Cherokees as individuals, whether east or west of the Mississippi River, parties to the treaties of 1835–36 and 1846, and exclusive of the Old Settlers, and, as so modified, be, and the same is hereby, affirmed.

April 30, 1906.

You, therefore, are hereby commanded that such proceedings be had in saidca use as, according to right and justice and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of May, in the year of our Lord one thousand nine hundred and six.

[seal.] James H. McKenney,
Clerk of the Supreme Court of the United States.

Exhibit C.

[Filed July 30, 1906.]

Know all men by these presents, that this contract, executed and approved in the manner prescribed in sections 2103 to 2106, both inclusive, of the Revised Statutes of the United States, and in pursuance of the provisions of section 68 of an act of Congress entitled "An act to provide for the allotment of lands in the Cherokee Nation,

and the disposition of town sites therein, and for other purposes," approved by the President of the United States July 1st, 1902, and ratified by the Cherokee people at a popular election held August 7th, 1902, is made by and between the Cherokee Nation, acting through its principal chief, Thomas M. Buffington, whose occupation is that of the principal chief of the Cherokee Nation, and whose residence is in the town of Vinita, in the Indian Territory, party of the first part, and the firm of Finkelnburg, Nagel, and Kirby, composed of Gustav A. Finkelnburg, Charles Nagel, Daniel N. Kirby, Gustav F. Decker, Allen C. Orrick, and Arthur B. Shepley, whose residences are in the city of St. Louis, State of Missouri, the occupation of each of whom is that of attorney at law, and which firm is party of the second part; and Edgar Smith, whose residence is in the town of Vinita, Indian Territory, and whose occupation is that of attorney at law, and who is party of the third part.

The purpose for which this contract is made is to secure the services of the parties of the second and third part as attorneys and counselors at law for the Cherokee Nation; the special thing to be done under this contract by the parties of the second and third part is to represent said nation as attorneys in the Court of Claims of the United States and in the Supreme Court of the United States (if any appeal is taken) in the case hereinafter mentioned; that is to say, in the prosecution of the claim of the Cherokee Nation against the United States, which claim is commonly known as the "Slade-Bender award" and grew out of and is described in the agreement between the Cherokee Nation and the United States for the purchase of what is known as the Cherokee Outlet.

This contract is to run from the 16th day of January, 1903, until the first day of January, 1907, or until said claim is prosecuted to a final determination and the judgments obtained thereunder (if any) are paid as provided in said act of Congress.

The rate per centum of fee to be paid to the parties of the second and third part in full for their services under this contract shall be as follows: Five per centum upon the first million dollars, or part thereof, collected; and two and one-half per centum upon the amount collected over and above the said first million dollars; the disposition to be made of the money when collected under this contract shall be as provided in section 68 of the act of Congress aforesaid—the compensation aforesaid to be paid to the said parties of the second and third part by the proper officers of the United States shall be deducted from the amount recovered and by the said officers paid direct to the said parties of the second and third part.

The scope and authority for the execution of this contract are set forth in section 68 of the said act of Congress, approved by the President and ratified by the Cherokee Nation as aforesaid, and no contingent matter or condition, except as herein set forth, constitutes any part of this contract; and by virtue of and under the authority of said act of Congress, the party of the first part has employed, and by these presents doth employ, the parties of the second and third part to represent said Cherokee Nation in said courts in the city of Washington, District of Columbia, as attorneys of said nation in the prosecution to a final determination and payment of the said claim, for and during the time aforesaid and for the compensation aforesaid, hereby giving to said attorneys full power and authority in the premises to do and perform all things whatsoever that may be necessary and lawful in the prosecuting of the said claim and for securing payment by the United States of any judgment that may be recovered by the said nation against the United States, as provided in said act of Congress, to sign and execute all papers that may be required on behalf of said nation, hereby ratifying and confirming all the lawful acts of said attorneys done in pursuance of the authority of this contract.

The parties of the second and third part hereby accept the employment herein set forth, and they will, to the best of their ability, do and perform the services stipulated and required by this contract

Witness our hands and seals this 16th day of January, 1903, and executed in triplicate.

THOMAS M. BUFFINGTON, [SEAL.]
Principal Chief of the Cherokee Nation.

FINKELBURG, NAGEL & KIRBY, [SEAL.]
Attorneys at Law.

EDGAR SMITH, [SEAL.]
Attorney at Law.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Edward F. Bingham, one of the justices of the supreme court of the District of Columbia, which is a court of record, do hereby certify that the above contract was executed before me on the 16th day of January, 1903, by Thomas M. Buffington, principal chief of the Cherokee Nation and acting for said nation, party of the first

part, and by Charles Nagel, a member of the firm of Finkelnburg, Nagel and Kirby, acting for said firm, and by Edgar Smith, parties of the second and third part, in my presence; that the interested parties therein are the Cherokee Nation, which is represented by the said Thomas M. Buffington, who is the principal chief of the said nation, and Finkelnburg, Nagel and Kirby, composed of Gustav A. Finkelnburg, Charles Nagel, Daniel N. Kirby, Gustav F. Decker, Allen C. Orrick, and Arthur B. Shepley, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory, as stated to me at the time; that the parties present were the said Thomas M. Buffington and the said Charles Nagel and the said Edgar Smith; that the source and extent of the authority claimed by the said contracting parties to make said contract was, and is, section 68 of the act of Congress, the title of which is set forth in said contract, and that the said contract was signed and executed, for the purpose and consideration therein stated and set forth, by the said Thomas M. Buffington and by the said Charles Nagel and by the said Edgar Smith, who are personally well known to me, and who appeared before me at the court house in the City of Washington, District of Columbia.

E. F. BINGHAM,
Chief Justice Supreme Court D. C.

SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify that Edward F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 16th day of January, 1903.

[SEAL.] JOHN R. YOUNG, *Clerk.*

ANSWER OF CHARLES H. TREAT, TREASURER OF THE UNITED STATES.

[Filed July 30, 1906, in the supreme court of the District of Columbia, holding an equity term the 30th day of July, A. D. 1906.]

FRANK J. BOUDINOT, COMPLAINANT. *vs.* ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR of the United States, and CHARLES H. TREAT, TREASURER OF THE UNITED States.	In Equity, docket 58, No. 26436.

Now comes the defendant, Charles H. Treat, by protestation, not confessing or acknowledging all or any of the matters and things in complainant's said bill of complaint to be true in the manner and form in which they are stated therein, for answer to said bill of complaint, and, by way of return to the rule to show cause entered herein on the 18th day of July, A. D. 1906, states as follows:

1. This defendant has no such knowledge or information as would or does enable him to either admit or deny the averments of fact contained in paragraph one (1) of complainant's said bill of complaint, and if the same should be deemed to be material calls for strict proof thereof.

2. This defendant admits that Ethan A. Hitchcock is a citizen of the United States and is sued as stated; and also admits that he, Charles H. Treat, is a citizen of the United States, and is sued as stated.

3. This defendant, upon information and belief, admits that on or about May 18, 1905, the Court of Claims rendered a judgment in favor of the Cherokee Nation and against the United States in substantially the form alleged in paragraph three (3) of complainant's said bill of complaint; and also, upon information and belief, that on or about the 30th day of April, 1906, said judgment was affirmed by the Supreme Court of the United States with a modification substantially as stated, but, for greater certainty in case of need, prays that reference may be made to copies of each of said judgments which will be produced upon the hearing of this cause.

4. As to whether said complainant is an Eastern Cherokee Indian, and as to whether he is entitled to any distributive share in the fund referred to in paragraph 3 of said bill of complaint, this defendant is without any such knowledge or information as will enable him to either admit or deny the averments of said complainant in said bill of complaint contained, and, if such facts be deemed to be material, calls for strict proof thereof.

5. This defendant is without any such information or knowledge as would or does enable him either to admit or deny the averment contained in paragraph 5 of said bill of complaint to the effect that the defendant, Ethan A. Hitchcock, Secretary of the Interior, either has or is about to draw his warrant upon the Treasury of the United States, as in said paragraph is specified, and therefore calls for strict proof thereof, if said averments of fact be deemed material upon the hearing of any of the issues here involved; but this defendant expressly denies that he is about to honor any draft which may have been or may hereafter be drawn by said Ethan A. Hitchcock, as Secretary of the Interior, in favor of the parties mentioned in said paragraph 5 of said bill of complaint, or any of them.

But further answering said paragraph of said bill of complaint, this defendant says that if the fact were otherwise it is plain that the payees of any such draft or their indorsees are necessary and indispensable parties to any proceeding in this court having for its object the enjoining of payment of any such draft, and that until such parties by proper process shall have been made parties to such proceeding the remedy prayed by the extraordinary writ of injunction should not be granted.

6, 7, and 8. This defendant is without any such knowledge or information as would or does enable him either to admit or deny all or any of the facts averred in paragraphs 6, 7, and 8 of complainant's said bill of complaint, and, if the same should be deemed material to the proper determination of any of the issues involved in this cause, calls for strict proof thereof.

Wherefore, having answered thus fully so many of the averments of said bill of complaint as his knowledge or information enables him to answer, this defendant prays that said rule to show cause may be discharged and that he may be hence dismissed with his reasonable costs in this behalf expended, and defendant will ever pray, &c.

CHAS. H. TREAT, *Treasurer of U. S.*

DANIEL W. BAKER,
U. S. Atty. for Deft.

DISTRICT OF COLUMBIA, *ss:*

I, Charles H. Treat, being first duly sworn, do depose and say that I am the Treasurer of the United States and the person whose name is subscribed to the foregoing and annexed answer to the bill of complaint of the complainant, Frank J. Boudinot; I have read over said answer and know well the contents thereof; the matters and things therein stated of my own knowledge are true, and those stated upon information and belief are believed to be true.

CHAS. H. TREAT.

Subscribed and sworn to before me this 30th day of July, A. D. 1906.

HIRAM W. BARRETT, *Notary Public, D. C.*

AFFIDAVIT OF FRANK J. BOUDINOT.

[Filed July 31, 1906, in the supreme court of the District of Columbia.]

FRANK J. BOUDINOT
vs.
ETHAN ALLEN HITCHCOCK.

Frank J. Boudinot, being duly sworn, on oath says that he is the complainant in this case, and that on or about the 14th day of February, A. D. 1900, the Eastern Cherokees, in council, assembled at Big Tucker Springs, near Tahlequah, in the Cherokee Nation, and organized the independent council of the Eastern Cherokees for the purpose of taking appropriate steps for the prosecution of their claim against the Government of the United States for $1,111,284.70, as found to be due under the terms of the Slade and Bender accounting and report dated April 28, 1894, and thereupon, to wit, on or about the 20th day of April, 1901, certain individuals composing the executive committee of said Eastern or Emigrant Cherokees entered into a contract with John Vaile, of Fort Smith, Arkansas, a true copy of which is filed herewith as part of this affidavit, whereby it was agreed between the parties to said contract that the said John Vaile and his associates should prosecute said claim of said Eastern and Emigrant Cherokees against the United States referred to in said Slade and Bender report and account for the gross sum of 15 per cent of the amount collected for the benefit of said Eastern and Emigrant Cherokees from the United States.

Affiant further makes oath and deposes and says that said John Vaille and his associates have successfully prosecuted said claim to final judgment, having begun to carry out and perform their contract immediately upon its execution and that their efforts

on that behalf have been fully recognized by the judgment of the Court of Claims rendered in the consolidated cases of the Cherokee Nation and the Eastern and Emigrant Cherokees against the United States, which has awarded to said John Vaille and his associates for their services in the collection of said claim the said sum of 15 per cent, as provided for in said contract.

Affiant further saith that said sum of 15 per cent so awarded by said judgment of said Court of Claims has been paid out of said fund by said Eastern and Emigrant Cherokees.

Affiant further saith that but for the interference of said firm of Finkleberg, Nagle & Kirby, and said Edgar Smith, under their pretended contract with the Cherokee Nation, referred to in these proceedings, and the denial by them on behalf of said Cherokee Nation of the exclusive right of the Eastern and Emigrant Cherokees to the distribution per capita of said fund, the same would long since have been paid to and distributed among said Eastern and Emigrant Cherokees.

FRANK J. BOUDINOT.

Subscribed and sworn to before me this 30th day of July, A. D. 1906.

[Notarial seal.] GRAYCE E. WILTBERGER, *Notary Public.*

My commission expires Feb. 18, 1911.

Contract between David Muskrat, of Flint District, Daniel Gritts, of Tahlequah District, and Frank J. Boudinot, of Illinois District, the Executive Committee of individuals known as Eastern or Emigrant Cherokees, and John Vaille, of Fort Smith, Arkansas, for the collection of certain moneys due the said Eastern or Emigrant Cherokees.

Know all men by these presents, That this contract made in writing and in duplicate, a copy whereof is hereby delivered to each of the contracting parties, witnesses that we, David Muskrat, attorney, of Flint district; Daniel Gritts, attorney, of Tahlequah district, and Frank J. Boudinot, of Fort Gibson, Illinois district, attorney at law, all being residents of the Cherokee Nation and constituting "The executive committee of the Eastern or Emigrant Cherokees" under the authority of the conventions or councils of the Eastern Cherokees by resolutions duly passed at Bug Tuckers Springs, Cherokee Nation, on the sixteenth day of February, A. D. 1900, and on the fourth day of April, A. D. 1900, copies of which are hereto attached and made a part hereof, acting for ourselves and other Eastern Cherokees and their heirs or legal representatives, parties of the first part, and John Vaile, counsellor, of Fort Smith, State of Arkansas, party of the second part, contract and agree as follows, to wit:

First. This contract is made at Fort Smith, in the State of Arkansas, on the 20th day of April, 1901, for the purpose of collecting the money due the Eastern or Emigrant Cherokees under the treaties between the Cherokee Nation and the United States, and particularly under the fifteenth article of the treaty of 1835 and the ninth article of the treaty of 1846, said money being due by the United States and being particularly set forth in the so-called Slade-Bender report, as rendered by them on the twenty-eighth day of April, 1894, and found on page thirty-two, House of Representatives Executive Document Numbered one hundred and eighty-two, Fifty-third Congress, third session, in the second item of their said finding, to wit:

"Under the treaty of 1835: Amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to treaty fund, $1,111,284.70, with interest from June 12th, 1838, to date of payment."

Said money is to be disposed of, when collected, in the manner set forth in the ninth article of the treaty of 1846 and paid out, per capita, to the Eastern Cherokees, or their legal representatives, except the fees hereby set apart and contracted by the parties of the first part to the party of the second part for his expenses and services and the expenses and services of his associates or assigns, to wit: A sum equal to fifteen per centum on all sums appropriated to the use or benefit of the said Eastern or Emigrant Cherokees by the Congress of the United States on account of such claim.

The said party of the second part hereby agrees to immediately proceed to the collection of the said money and to pay all of the expenses which may be incurred by him or by his associates in the prosecution of the said collection without any expense to the parties of the first part; and the parties of the first part do, for valuable consideration, especially the expenses and services rendered in this behalf during the first and second sessions of the Fifty-sixth Congress, the receipt whereof is hereby acknowledged, hereby contract to pay to the said party of the second part and his associates or assigns a sum equal in amount to fifteen per centum on any recoveries to the Eastern or Emigrant Cherokees, as we are authorized to do under the resolu-

tions of the councils of the said Eastern or Emigrant Cherokees, as above referred to, and the said party of the second part is hereby authorized to execute a receipt for the said fifteen per centum when the same shall have been appropriated and the warrants issued, or execute any other proper releases required by the officers of the United States, in the name and on behalf of the said Eastern or Emigrant Cherokees. The party of the second part further expressly agrees that the payment of the said fee of fifteen per centum shall cover and include all expense of any kind and character whatever. It is expressly understood and agreed that the said Eastern or Emigrant Cherokees do not herein propose to recognize any contracts made or authorized by the Cherokee Nation for the collection of such claim, but that this is the only contract for its collection authorized or recognized by the Eastern or Emigrant Cherokee council.

The above contract shall be limited in time and shall continue in force until July first, 1904, and no longer; except the question as to said indebtedness shall have been then referred to the courts or other tribunals, then, and in that event, such contract and assignments or agreements thereunder shall be and remain in full force and effect. It is further agreed that the party of the second part shall, at intervals of six months, make a detailed report of the status of the said claim, to be transmitted to the president of the council of the Eastern or Emigrant Cherokees for the information of the people.

This contract is in lieu of all previous contracts and is the only contract recognized by the Eastern or Emigrant Cherokee council.

In witness whereof we do hereto attach our hands and seals on this the 20th day of April, 1901, at Fort Smith, Arkansas.

The executive committee of the Eastern or Emigrant Cherokees, parties of the first part:

DAVID MUSKRAT. [SEAL.]
DANIEL GRITTS. [SEAL.]
FRANK J. BOUDINOT. [SEAL.]

Party of the second part:

JOHN VAILE. [SEAL.]

INTERPRETER'S CERTIFICATE.

I, J. Henry Dick, of Tahlequah, Indian Territory, do hereby certify that I have carefully interpreted the foregoing contract to David Muskrat and Daniel Gritts and that they fully understand and endorse it as drawn in accordance with their direction, and that they sign it of their own free will and accord and for the purposes therein set forth.

Witness my hand this the 20th day of April, 1901.

J. HENRY DICK.

U. S. DISTRICT FOR THE WESTERN DISTRICT OF ARKANSAS, FORT SMITH:

This day personally appeared before me the parties to the above contract, to wit, David Muskrat, of Flint district, Daniel Gritts, of Tahlequah district, and Frank J. Boudinot, of Fort Gibson, Illinois district, all of the Cherokee Nation, parties of the first part, and John Vaile, of Fort Smith, Arkansas, party of the second part, as stated to me at the time, who executed the above contract in my presence at the city of Fort Smith, State of Arkansas, on the 20th day of April, 1901, all of said parties being present and executing the same in person—said contract having been interpreted to David Muskrat and Daniel Gritts in my presence as certified above by J. Henry Dick. The parties of the first part c aimed to be authorized as the executive committee of the Eastern or Emigrant Cherokees under the authority of a resolution of the council and convention of the Eastern or Emigrant Cherokees, held at the general convention grounds at Bug Tucker's Springs, near Tahlequah, Cherokee Nation, on the sixteenth day of February, nineteen hundred; and also a like resolution of same authority at same place on April fourth, nineteen hundred, authorizing them to contract a sum equal to an amount not exceeding fifteen per centum of any sum or sums collected for said Indians. (Copy hereto attached.)

In witness whereof, I hereunto attach my hand on this the 20th day of April, A. D. 1901.

JOHN H. ROGERS,
United States District Judge for the Western District of Arkansas.

UNITED STATES OF AMERICA,
Northern District of the Indian Territory, ss:

I, H. T. Wilder, a notary public within and for the northern district of the Indian Territory, do hereby certify that the within and foregoing four and one-half pages of typewritten matter contain a true copy of a contract purporting to be the original contract signed by one person in the Cherokee language and by Daniel Gritts, Frank J. Boudinot, and John Vaile in English, interpreted by J. Henry Dick, and executed before John H. Rogers, U. S. dist. judge for the western district of Arkansas, all signatures to which appear genuine.

Witness my hand and notarial seal this August 18, 1903.

(NOTARIAL SEAL.) H. T. WILDER,
Notary Public.

My commission expires June 2, 1907.

OPINION.

[Filed September 21, 1906.]

The bill in this case is filed by Frank J. Boudinot as an Eastern Cherokee Indian, on behalf of himself and such other Eastern Cherokees as may come in and be made parties complainant against the Secretary of the Interior and the Treasurer of the United States. It seeks to prevent the payment of certain counsel fees to the firm of Finkleberg, Nagle and Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, I. T., out of a judgment in favor of the Cherokee Nation for a large sum of money. A rule was issued to the above-named officials and upon the bill and accompanying affidavits, and their answers in the matter has been heard.

The broad question involved is the validity of the contract upon which the claim for fees is based. From the sworn answer of the Secretary of the Interior, fortified by public records, it appears that Congress, by an act entitled "An act to provide for the allotment of the lands of the Cherokee Nation" (32 Stat. at Large, p. 716), conferred jurisdiction upon the Court of Claims to adjudicate "any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States," and also provided that the prosecution of such claim should "be through attorneys employed and to be compensated in the manner prescribed in sections 2103 and 2106, both inclusive, of the Revised Statutes of the United States, *the tribe acting through its principal chief in the employment of such attorneys.*"

Section 74 of said act provided that the same should not "take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation," in the manner prescribed in section 75 thereof. This ratification was had as prescribed by said section at a popular election held August 7, 1902, and duly certified to the President of the United States, as required by said act.

Subsequently, on January 16, 1903, pursuant to the provisions of section 68 of said act, and in compliance with the requirements of the above quoted sections of the Revised Statutes, the contract in question was entered into between the Cherokee Nation, acting through its principal chief, Thomas M. Buffington, and the firm of Finkleberg, Nagel and Kirby and Edgar Smith, and was approved by the Acting Secretary of the Interior, as provided by law. Subsequently, on February 20, 1903, these attorneys, in pursuance of this contract, brought suit in the Court of Claims in the name of the Cherokee Nation against the United States. In accordance with the requirements of section 2104 of the Revised Statutes, the Acting Secretary of the Interior and the Acting Commissioner of Indian Affairs, on July 17, 1906, have certified to the proper accounting officers that this contract has been fully complied with on the part of said Finkleberg, Nagle and Kirby and Edgar Smith.

It does not admit of debate that Congress, in providing a method whereby the claims of the Cherokee Nation and of the Eastern Cherokees against the United States should be prosecuted, was in no way exceeding its powers. Inasmuch as the contract in question was entered into and performed in strict accordance with this legislation, I am unable to find any grounds upon which this court should interfere with the payment of the amount provided by the contract out of the sum recovered by the Cherokee Nation. Its validity is recognized by the terms of the judgment recovered in the Court of Claims, which diminishes the amount thereof by "such counsel fees as may be chargeable against the same under the provisions of the contract with the Cherokee Nation of January 16, 1903," being the contract in question.

It is true that, after suit had been instituted by counsel under this contract in the name of the Cherokee Nation, the Eastern Cherokees, employing other counsel, began two suits in their own name to prosecute their claim against the United States. The three suits were consolidated by order of the court, but the judgment rendered is in favor of the Cherokee Nation, to be distributed according to the ascertained interests of the Eastern Cherokees and others. It would thus appear that in this litigation the Cherokee Nation was recognized as a trustee for those who were entitled to this fund, and this seems to have been the view taken by the Court of Claims. In its opinion it says: "As to these Eastern nonresident Cherokee aliens the nation acted simply as an attorney collecting a debt. In its hands the moneys would be an implied trust for the benefit of the equitable owners." In this view of the case the attorneys who were employed by the trustee, acting under proper authority in the premises, would be entitled to compensation out of the fund recovered, notwithstanding the cestui que trust had deemed it advisable to employ independent counsel to safeguard his interests.

For these reasons the rule will be discharged.

ASHLEY M. GOULD, *Justice.*

REPLICATION.

[Filed September 29, 1906, in the supreme court of the District of Columbia, this 29th day of September, A. D. 1906.]

FRANK J. BOUDINOT
against
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL. } Equity, No. 26436.

The complainant joins issue on the answers of the defendants heretofore filed in the above-entitled cause.

CHAS. POE,
SAMUEL A. PUTNAM,
Solicitors for the Complainant.

DECREE.

[Filed October 8, 1906, in the supreme court of the District of Columbia, holding an equity term.]

FRANK J. BOUDINOT, COMPLAINANT,
vs.
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR of the United States,
and
CHARLES H. TREAT, TREASURER OF THE UNITED States. } In equity, docket No. 58, case No. 26436.

This cause having come on to be heard on complainant's motion for writs of injunction to be directed to the defendants and each of them as specified in complainant's bill of complaint was argued by counsel for the respective parties and submitted to the court upon the bill of complaint and affidavits filed in support thereof, the pleas, answers, and accompanying exhibits of defendants, the rule to show cause heretofore issued by the court and the return of the defendants thereto, and the court being now sufficiently advised in the premises,

It is this 8th day of October, A. D. 1906, adjudged and ordered that said rule to show cause be and the same is hereby discharged and held for naught, and it further appearing to the court that said bill of complaint is defective for want of indispensable parties, and also fails to disclose any equity which would require or justify the granting of the relief prayed,

It is further adjudged, ordered, and decreed that said bill of complaint be and the same is hereby dismissed at complainant's costs.

ASHLEY M. GOULD,
Associate Justice, Supreme Court of the District of Columbia.

APPEAL, ETC.

[Filed October 16, 1906.]

FRANK J. BOUDINOT
vs.
ETHAN A. HITCHCOCK, SECY., ET AL. } Equity, No. 26436.

Now comes the complainant and in open court prays an appeal from the decree passed herein to the court of appeals of the District of Columbia, which is allowed by the court, and the penalty of the bond for costs is hereby fixed at one hundred dollars.

ASHLEY M. GOULD, *Justice.*

October 16th, 1906.

MEMORANDUM.

October 16, 1906. Appeal bond—filed.

DESIGNATION TO CLERK FOR PREPARATION OF TRANSCRIPT OF RECORD.

[Filed October 16, 1906.]

FRANK J. BOUDINOT
vs.
ETHAN A. HITCHCOCK, SECY., ETC., ET AL. } Equity, No. 26436.

Mr. YOUNG:

In making up the transcript of the record on appeal in this cause you will include the following papers: Bill of complaint; rule to show cause; affidavits in support of bill; answers; opinion of the court; replication and date of filing the same; decree dismissing bill; prayer for appeal and order thereon; mem. of approval appeal bond.

CHAS. POE, *Solr. for Complt.*

Supreme court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 76, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26436 in equity, wherein Frank J. Boudinot is complainant and Ethan A. Hitchcock, Secretary of the Interior of the United States, et al., are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 30th day of October, A. D. 1906.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

EXHIBIT NO. 7.

1416 F STREET,
Washington, D. C., September 21, 1906.

Hon. CHARLES H. TREAT,
Treasurer of the United States.

SIR: Mr. Justice Gould, of the supreme court of the District of Columbia, to-day passed an order in the cause entitled Frank J. Boudinot against Ethan A. Hitchcock, Secretary of the Interior, and Charles H. Treat, Treasurer of the United States, equity No. 26436, discharging the rule to show cause why a preliminary injunction should not now be granted restraining the present payment of a sum, amounting to about one hundred and fifty thousand dollars, claimed to be due by Messrs. Finkelberg, Nagel & Kirby, of St. Louis, Mo., and Edgar Smith, of Vinita, Indian Territory, under a contract which they claim to have had with the Cherokee Nation for the payment to them of certain fees.

While one of the objects of this proceeding was to obtain a preliminary injunction enjoining the payment by you of this fund, that was far from its sole object, and the refusal by Mr. Justice Gould at this time to issue the high prerogative writ of injunction by no means determines the rights of the parties claiming to be interested in the fund in controversy, as the hearing of the application for the preliminary writ was had only upon the papers on file and not upon bill, answer, and proof. It is our intention to proceed at once, or as soon as your answer and that of the Secretary of the Interior to the bill of complaint have been filed to establish the allegations of our bill of complaint by proof, and we shall be as expeditious about this as possible. Under our practice in such cases we have had no opportunity up to this point in the cause to offer our proof, but we can assure you that we will cooperate with the Government's attorneys to speed the cause.

Our object in writing to you is to protest most respectfully upon the behalf of the Eastern Cherokees, all of whom we represent and who are citizens of the United States, against the payment by you of the fund claimed under this pretended contract for services which never were rendered, and to notify you that if it should be paid while this litigation is pending, in our humble judgment the Government of the United States can be compelled by appropriate proceedings to pay it a second time. (Pam-To-Pee *vs.* United States, 187 U. S., 371.) The course of practice in this jurisdiction is such that at this stage of the cause we are not permitted to file a bond of indemnity therein to protect persons in interest from any slight damage which may be caused by a short delay in the payment by you of this fund. The interests of clients, as well as of the United States Government, unite in making it both proper and prudent to postpone the payment of this fund until the case can be investigated fully and determined upon its merits, and it is with that view and in that spirit we write to you, and we trust that you will consider it to be your duty and for the protection of the Government of the United States to withhold, for the present, the payment of this claim.

Very respectfully, yours,

CHAS. POE,
SAML. A. PUTNAM,
Solrs. for Eastern Cherokees.

EXHIBIT NO. 8.

TREASURY DEPARTMENT,
OFFICE OF THE TREASURER OF THE UNITED STATES,
Washington, September 24, 1906.

CHAS. POE and SAML. A. PUTNAM,
Solicitors for Eastern Cherokees, 1416 F street, Washington, D. C.

SIRS: Your letter of the 21st instant, in which you protest against payment of claim made by persons named for services claimed to have been rendered Eastern Cherokees under contract, has been referred for attention to the Solicitor of the Treasury.

Should you have occasion to write again on this or a similar subject, please address that officer.

Respectfully,

CHAS. H. TREAT,
Treasurer of the United States.

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